The Solicitors' Journal

VOL. LXXX. **Saturday, February 1, 1936.** No. 5

Current Topics.

The Judges' Oath of Office.

THE announcement by the Home Office that the law does not require that judicial officers who have taken the oath of allegiance and the judicial oath should again take those oaths on a demise of the Crown is in accordance with what would appear to be the correct interpretation of the Demise of the Crown Act, 1901, which provides that "the holding of any office under the Crown . . . shall not be affected, nor shall any fresh appointment thereto be rendered necessary, by the demise of the Crown," for it would indeed seem an odd result if the judicial office, which is not to be affected in those circumstances, could not be exercised till the holder had taken afresh the oath of allegiance and the judicial oath as some writers on the subject appear to have argued. It may be pointed out, however, that in 1910, on the death of King Edward the Seventh, the judges, as appears from a memorandum prefixed to the volume of Appeal Cases for that year, "took the oath of allegiance and the judicial oath as judges of King George the Fifth." This may have been done *ex abundante cautela*, or as a personal tribute to the new monarch. The latter view seems to receive support from the communication made by the Home Secretary in 1910 to justices of the peace, in which, after informing them that they could lawfully execute the duties of their office without taking any fresh oath, he went on to say that "it is proper and desirable that they should embrace an early opportunity of taking afresh the oath of allegiance and the judicial oath." These two forms of oath differ notably in this respect, that in the judicial oath the judge swears to serve our Sovereign Lord the King in the office, whereas in the oath of allegiance he swears that he will be faithful and bear true allegiance to His Majesty and to his heirs and successors.

A Conveyancing Classic.

THE appearance of Vol. I of a new—the twenty-third—edition of Prideaux's "Precedents in Conveyancing" is a fresh reminder of the high place this standard work has held for so many years in the esteem of Chancery practitioners. Its original begetter, FREDERICK PRIDEAUX (1817–1891), received his legal training, first, in the office of his elder brother, WALTER, who was a partner in a well-known London firm of solicitors, and, secondly, in the chambers of JOHN HODGKIN, a notable personage of his day, of whom it was well said that he successfully represented and carried forward the traditions of the school of RICHARD PRESTON and PETER BELLINGER BRODIE, which aimed at conciseness and brevity at a time when the Legislature had not yet interfered to curtail the intolerably diffuse style of legal documents. Under such a mentor it is not surprising that PRIDEAUX should in his turn become a master in the art of conveyancing and an able expositor of its mysteries, both in his published writings and in the lectures he delivered as Reader in Real and Personal Property in the Inns of Court. His first publication, "Law of Judgment and Crown Debts as they affect Real Property," was issued in 1842, two years after his call, that being followed some time later by his "Handbook of Precedents in Conveyancing," the title being subsequently altered to "Precedents in Conveyancing with Dissertations on its Law and Practice," in which form in edition after edition was perpetuated the name of the author: and under the skilful editorship of a succession of eminent practitioners has been periodically kept abreast of the mass of legislation which has been poured out in such profusion. The edition issued in 1925, for which SIR BENJAMIN CHERRY and Mr. J. R. PERCEVAL MAXWELL were responsible, commenced by saying that it was "an epoch-making edition, for the legal profession will for ten years from January 1, 1926, be on their trial." That period has elapsed, and now it is fitting that we should have a fresh recension embodying the experience of those fateful years.

Business of Courts Committee: Final Report.

THE third and final report of the Business of Courts Committee was published on Wednesday by H.M. Stationery Office (Cmd. 5066), price 4d. The Crown Office rules, procedure in patent actions and affidavit of ships' papers form the subject-matter of the report, which contains a number of recommendations designed to simplify procedure. Only the barest outline can be given here. It is hoped to deal with the various matters involved more fully in our next issue. The Committee recommends that in cases where one of the prerogative writs of *mandamus*, prohibition or *certiorari* is sought, application to take proceedings should be made to a Divisional Court and should be supported by affidavit stating the plaintiff's case. The writs themselves should no longer be issued and proceedings should be finally determined by the order of the court. With regard to trials at Bar, it is recommended that no indictments should be preferred in or removed into the King's Bench Division except indictments found by the grand jury of Middlesex, and where the court considers that this form of trial is appropriate. In both cases the court should be empowered to order trial at the Central Criminal Court. In cases where removal is now possible on the ground that a fair and impartial trial cannot be had in the court below, a change of venue would, in the Committee's opinion, suffice. The Committee advocates the abolition of criminal informations filed by the Master of the Crown Office at the instance of a private prosecutor, but thinks there may be some advantage in preserving criminal informations filed *ex officio* by the Attorney-General. Rules providing for the outlawing of defendants who fail to appear should be abolished. Existing procedure relating to informations in the nature of *quo warranto* should be simplified along the same lines as in cases where a prerogative writ is sought, and an order of the court prohibiting a person unlawfully claiming an office from acting therein should be conclusive. A separate set of rules with an appropriate title (not "Crown Office Rules") covering

purely criminal matters is advocated, as is also the incorporation of all other proceedings on the Crown side in the Supreme Court Rules. The Civil Paper should be abolished and all business to be heard by the Divisional Courts of the King's Bench Division should be entered in the Crown Paper. With regard to procedure in patent actions the Committee recommends that Ord. LIIIA, r. 21A, be amended so as to enable the judge to order the parties to embody their scientific evidence in affidavits to be subject to cross-examination and to be exchanged before the hearing in court, and also to order the parties to exchange statements, signed by counsel, setting out all matters of fact and contentions of law (including contentions on the construction of documents) on which they intend to rely at the trial. In actions on policies it is recommended that an order for an affidavit of ships' papers should not, save in exceptional cases, be made until an order for discovery has been made. In marine insurance actions it is suggested that underwriters should be permitted to put in evidence documents of a non-controversial nature, such as ships' logs, stowage plans, weather reports, etc., without formal proof.

The Highway Code and the Law.

THE attention of readers may be drawn to a recent statement of HILBERY, J., concerning a plea to the effect that a motor cyclist had contravened or failed to observe the Highway Code by overtaking a lorry at cross roads. The learned judge said: "I thought the Highway Code was drawn up for our guidance, not for our peril. One must not have recourse to it for a legal pleading. I shall have great trouble if it has to be given the force of law in these courts. The Highway Code is a very useful production, and, so long as it is not treated in court as an essential part of the law, all will be well." When the Highway Code was being distributed to every householder last July, we alluded in a "Current Topic" (79 SOL. J. 549) to the status of its provisions in relation to law, and it may not be out of place to repeat the sub-section of the Road Traffic Act, 1930, where the position is indicated. Section 45 (4) of that statute enacts that a failure on the part of any person to observe any provision of the Highway Code shall not of itself render that person liable to criminal proceedings of any kind, but that any such failure may in any proceedings (whether civil or criminal, and including an offence under the Act) be relied upon by any party to the proceedings as tending to establish or negative any liability which is in question in those proceedings.

Pedestrian Crossings.

THE success of pedestrian crossing-places, at least in London, may be regarded as now having been recognised by the local authorities in view of the resolution recently passed at a meeting at City Hall, Westminster, which was called by the Metropolitan Boroughs Standing Joint Committee as a result of negotiations between the Minister of Transport and the boroughs. Representatives of the boroughs and of a number of adjoining local authorities were present. According to a statement made at the conclusion of the meeting the resolution above referred to contains a recommendation that the constituent authorities take over the crossings as permanent works on 1st April next, on the conditions, however, that only such crossings as are approved by the local authority be taken over, and that the cost of any works which have been replaced or abandoned before 31st March, 1936, be borne entirely by the Minister. A local authority taking over crossings within its area will be liable to refund 40 per cent. of the cost of their installation and will be responsible for 40 per cent. of the cost of maintenance. Representations were made by the conference in view of the tendency of both drivers and pedestrians to ignore the regulations governing the use of pedestrian crossings, and it was urged that steps should be taken to ensure better observance in future. As a result, it was announced in *The Times* a few days later that special watch was to be kept by the police with a view to enforcing the regulations. The number of successful prosecutions for infringing the regulations is considerable—there were 315 in a recent week—but it is pointed out that the local authorities are chiefly concerned because some of the most important crossings in their areas are virtually disregarded by both drivers and pedestrians, it being suggested, indeed, that the guidance given by the police when the system was first instituted might be repeated in preference to arrangements for trapping unwary drivers.

The Minister of Transport on the Observance of the Regulations.

ACCORDING to a recent statement prompted by the information that both motorists and pedestrians appeared to be reluctant to observe the crossing rules, the Minister of Transport believes that as the value of the crossings as a means of reducing accidents comes to be realised the public will be convinced of the wisdom of abiding by the rules. If that happened, the statement continues, it would represent a big step, not only towards reducing road casualties, but in bringing about closer co-operation and mutual forbearance between the two principal classes of road users. Reference was made at the same time to the experiment about to be made in East London along a 6-mile stretch of road which has a bad reputation for accidents. In this instance pedestrians will only be able to cross at gaps in the otherwise continuous guard rails and special provision will be made for their safety. We have alluded to this experiment in past issues and need not enlarge upon the subject here. It will be interesting to see, however, if the limitation placed on the number of points at which pedestrians will be able to cross will lead to a better observance of the regulations in this locality.

The Thirty Miles an Hour Speed Limit: Enforcement.

THE de-restriction of roads over which the speed limit imposed by the Road Traffic Act, 1934, in built-up areas would ordinarily have been operative recently formed the subject-matter of some notes in this column. It is now proposed shortly to allude to problems—frequently before the courts—associated with the enforcement of the limit. The Lord Mayor at a recent sitting at the Mansion House Justice Room expressed himself as struck by the large number of summonses against motorists for exceeding the speed limit of thirty miles an hour. "We get," he said (the quotation is from *The Times*), "far too many of these cases in the City, and I feel I have been far too lenient hitherto. It has been my practice to impose, on the whole, small fines, and wherever possible to abstain from endorsing driving licences. In spite of that I find that not only is the number of cases decidedly on the increase, but the speeds are getting higher and higher. From now onwards I shall try to put a stop to this total disregard for the Act, and shall go on increasing the fines till I reach the extreme limit, accompanied by the endorsement of the driving licences of the offenders." In cases heard after the foregoing statement fines ranging from £2 to £3 were imposed and the offenders' licences were endorsed. It is stated that the defence generally was that the event took place at night when there was a clear road and that there was no danger. In a recent case at Hendon Police Court, noted in the *Evening Standard*, the solicitor for the defendant protested against the method of detecting offences against the speed limit where signals are made between the police on the trap by waving a handkerchief. In answer to a question by the chairman on the correctness of the method which had been the custom for years, it was suggested that such means of detection was unsatisfactory where the speed was only a few miles an hour above the limit; it might be all right where the limit was exceeded by a big margin. In the case in question, where the alleged speed was thirty-seven miles an hour, it was pointed out that an error of only $2\frac{3}{5}$ seconds

was sufficient. The summons, it may be noted, was dismissed. That the question of road safety is largely bound up with a proper observance of the limit will, we think, be generally conceded, for it seems clear that the imposition of the same was an important factor in the improved road-accidents statistics for 1935.

Open Spaces and Footpaths.

THE Commons, Open Spaces and Footpaths Preservation Society, of which Sir LAWRENCE CHUBB is secretary, indicated in the course of a recent appeal for support of its efforts what is the daily work of the society. Some 5,000 applications—the number is steadily increasing—from private inquirers or local authorities for information and expert advice are dealt with annually. The society scrutinises Parliamentary Bills with the object of opposing or amending clauses that threaten public interests in the country. Examples of the fruits of this kind of activity are provided by clauses inserted in the Law of Property Act, 1925, securing to the public for all time a right of access to all Metropolitan and urban commons, and preventing further enclosures without the consent of the Ministry of Agriculture and Fisheries. The society has done considerable work in advising how effect can best be given to the Rights of Way Act, 1932, which it promoted, and this has entailed close co-operation with local authorities and is leading to a systematic effort under the society's direction to record on maps all the reputed public rights of way in the country. It is, perhaps, interesting to recall that the society was launched in January, 1866, at a Mansion House meeting. The chief inspirer of the movement was Mr. SHAW LEFEVRE, M.P., afterwards LORD EVERSLEY, who for more than sixty years directed and stimulated its efforts. Originally founded to preserve the open spaces within fifteen miles of the Metropolis, the society's influence soon extended all over England and Wales where commons and village greens were endangered. The scope of its operations was subsequently enlarged to include the preservation of other open spaces, while the protection of footpaths and other rights of way became an important branch of its activities after 1899, when the National Footpath Society was amalgamated with it. To-day the society is the senior organisation concerned with the preservation of the countryside, having been constantly engaged for seventy years in defending and extending public rights and privileges. Its work, it is stated, becomes more varied and important as fresh problems arise.

The Land Registration Bill.

A NUMBER of recommendations contained in the report of the Departmental Committee which was appointed to consider, *inter alia*, the position of the Land Registry Insurance Fund are reflected in the provisions of the Land Registration Bill, which was introduced by the Attorney-General on 20th December last. It is proposed that the Insurance Fund established under the Land Transfer Act, 1897, which now stands at about £448,000, shall be reduced to £100,000, and that assets in excess of that figure shall be applied as the Treasury may direct towards the redemption of the national debt (cl. 4), provision being made for maintaining the fund at the new level and for payment out of the Consolidated Fund in the event of the Insurance Fund being insufficient to meet claims upon it. A financial memorandum printed with the Bill explains that the Consolidated Fund guarantee thus given is essentially the same as that now provided by s. 85 (4) of the Land Registration Act, 1925, and that the proposed repeal of that sub-section and its replacement by the new provisions is dictated solely by the somewhat different machinery entailed by the proposal to maintain the fund at a standard value. The foregoing is the principal innovation. Other minor matters may be shortly noted. The Bill provides for the repeal of the proviso to sub-s. (4) of s. 75 of the Land Registration Act, 1925, which prohibits recourse to the Consolidated Fund for the payment of any indemnity where persons are prejudicially affected by the registration of others as proprietors of registered estates by virtue of titles acquired under the Limitation Acts (cl. 3). Another provision (cl. 6) is dictated by the fact that s. 85 of the Land Registration Act, 1925, was not widened to correspond with s. 83 (3), which for the first time provided for the payment of indemnities in respect of loss or destruction of documents or errors in official searches. Under the new clause all indemnities payable under the Act are to be defrayed out of the Insurance Fund. It is thought that the two provisions just described are unlikely to increase to any material extent the number or amount of indemnities payable out of the fund. Clause 7 provides for the repeal of s. 145 (4) of the Act of 1925 and for the arrangement from time to time of the fees relating and incidental to registration so as to produce amounts sufficient to discharge the salaries and other expenses incidental to the working of the Act, and such further amounts as are in the opinion of the Lord Chancellor and the Treasury reasonable in the light of indemnities paid and of the contingency that such may become payable in the future.

Recent Decisions.

In *Passmore* v. *Vulcan Boiler and General Insurance Co. Ltd.* (*The Times*, 24th January) the court upheld an award of an arbitrator which was based on the consideration that a motor car insurance policy relating to the use of a car for "social domestic and pleasure purposes and use for the business of the insured as stated in the Schedule hereto" did not cover the insured when she and a fellow representative of the same employers were travelling together on their employers' business. DU PARCQ, J., observed in the course of his judgment that insurance companies were entitled to know exactly what business they were covering and the extent of the risk which they were undertaking.

The decision of the House of Lords in *Railway Assessment Authority* v. *Southern Railway Co.*; *London County Council and Others* v. *Southern Railway Co. and Others* (*The Times*, 25th January) was given on Friday of last week when appeals from an order, dated 6th February, 1935, of the Railway and Canal Commission Court directing the Railway Assessment Authority to substitute £1,077,131 for £2,180,000, the figure arrived at by that Authority as the net annual value of the Southern Railway Company as a whole for rating purposes, were dismissed. At the former proceedings (79 SOL. J. 127) the railway company contended against the Railway Assessment Authority that the proper figure was £500,000. In the second appeal the appellant local authorities—the London County Council, the County Valuation Committee of Middlesex and the Corporations of Croydon and Brighton—had contended that the proper figure was £3,000,000.

In *Egginton and Another* v. *Reader and Another* (*The Times*, 28th January) it was held that a commercial traveller, who worked exclusively for one firm and was paid a commission and provided with a weekly sum towards the running expenses of his car, was not in the employ of that firm in such a sense as to enable the plaintiff to recover damages from the firm in respect of personal injuries received as a result of the traveller's negligent driving. LEWIS, J., referred to *Performing Right Society, Ltd.* v. *Mitchell and Booker* (*Palais de Danse*), *Ltd.* [1924] 1 K.B. 762, and intimated that none of the tests there laid down (*ibid.*, p. 771) as indicating that a contract was one of service had been satisfied in the present case.

In *Schlarb* v. *London & North Eastern Railway Co.* (*The Times*, 30th January), the plaintiff recovered £1,000 damages in respect of personal injuries sustained as a result of falling off one of the defendants' platforms in a dense fog. The stairway approach reached the platform less than three yards from its edge and there were a number of right-angle turns between the ticket office and the platform. ATKINSON, J., applied the principles laid down by the House of Lords in *London, Tilbury and Southend Railway Co.* v. *Paterson*, 29 T.L.R. 413, with the result indicated.

Capacity and Unsoundness of Mind:

WILLS AND SETTLEMENTS.

"How would you define insanity?" is a question still frequently asked in the courts and elsewhere. Dr. E. G. Younger, in his useful little book "Insanity," advised medical witnesses not to attempt a definition, though he gave several possible definitions himself, including this: "Insanity is a perversion of the Ego."

Dr. Younger's reluctance is now widely shared. It is now the practice amongst all persons concerned with insanity, especially in its legal aspect, to be chary of definitions and dogmatic utterances on the subject. This is not surprising. Our knowledge in regard to insanity has increased immensely during the past century; so, too, have the complications of the subject.

How great these are was shown by a recent case in the Chancery Division, which concerned a case of aphasia. Much of the evidence, especially the expert evidence, was given with unusual clarity. Yet it was plain, as it is in most cases of that kind occurring to-day, that the essential factors were regarded as almost beyond human understanding.

It was not ever thus. The judges of the last century, though they realised the complexities of the subject, were not averse from making dogmatic statements, some of which have since caused difficulty. Thus, in *Frere* v. *Peacocke* (1846), 1 Rob. 442, Sir H. Jenner Fust dealt with the question of "moral insanity," at that time a somewhat novel conception. He seemed to regard "moral insanity" as altogether outside the ambit of the law, however important it might be from a medical standpoint.

Forty years later there seems to have been less certainty on this point. In the *Law Quarterly Review* for October, 1888, there appeared an article by Mr. A. Wood-Renton. He formulated eight propositions dealing with testamentary capacity and unsoundness of mind, which are still of great practical value: see "Hayes and Jarman's Concise Forms of Wills," 16th ed. (1933), pp. 83-84. Proposition VI is as follows: "Affective, or moral, insanity does not (generally?) destroy testamentary capacity." Had he written forty or fifty years earlier, it is doubtful if he would have inserted the qualifying word "(generally?)." *Frere* v. *Peacocke* is still cited as an authority, when the question of "moral insanity" is raised, though it is hard to say exactly how far it should be followed. Much of the judgment is indisputable, but some parts of the report make strange reading to-day. For instance, those alleging unsoundness of mind on the part of the testator, asserted, along with the evidence of that unsoundness, that he never attended a place of worship! The world has changed a great deal in the course of ninety years. It would seem that in *Frere* v. *Peacocke* the testator was at any rate free from religious mania!

Probably the most vital question in the whole subject is: What constitutes the essential feature of insanity? What is its "acid test?" This was discussed in *Dew* v. *Clark*, 3 Add. 79, long considered to be a leading case on testamentary capacity (see Jarman on Wills, 7th edition (1930), vol. I, p. 57). Modern critics, however, have taken exception to one generalisation by Sir John Nicholl. At p. 91 of 3 Add. he is reported as saying "In short, I look upon delusion, in this sense of it, and insanity, to be almost, if not altogether, convertible terms."

This dictum is characteristic of those uttered on the subject by even the most eminent judges of the last century. It is highly dogmatic, in fact if not in form, and, as is pointed out on p. 50 of Mortimer's Probate Practice (2nd edition, 1927), it frequently breaks down in practice. It would exclude cases of grave dementia, where the mind was so weak that testamentary capacity was clearly lost, but no actual delusions were present. On the other hand it would include cases where delusions did not affect the general faculties of the mind or influence the testator in making his will.

In 1867, forty years after *Dew* v. *Clark*, *Smith* v. *Tebbitt*, L.R. 1 P. and D. 398 was decided. The proposition implied in *Smith* v. *Tebbitt*, that "any degree of mental unsoundness, however slight, and however unconnected with the testamentary disposition in question, must be held fatal to the capacity of a testator" cannot be maintained. In fact it was declared by Cockburn, C.J., in *Banks* v. *Goodfellow* (1870), L.R. 5 Q.B. 549, 556 to have been "wholly unnecessary to the decision." See p. 556 of the report of *Banks* v. *Goodfellow* where are to be found the passages above quoted. But *Smith* v. *Tebbitt* contained some valuable dicta on the essential features of insanity. Thus on p. 404 of the report, which begins on p. 398 of L.R. 1 P. and D., are these words, uttered by Sir J. P. Wilde (afterwards Lord Penzance): "It is when the words or deeds of others, referred to our own standard and that which by experience is found to be the common standard of the human race, appear to transgress those limits, that we suspect these common senses, emotions, and faculties, which we know to exist, to be the subjects of disorder or disease. If the divergence be very marked, and exhibit itself either on many subjects or with uniform constancy in the behaviour of the individual, we pronounce disease without hesitation."

The language is somewhat tortuous, and the last sentence is characteristic of the dogmatic utterances of the judges of that time on the subject. Moreover, the proposition, if strictly construed, might lead to a finding of insanity in the case of a man who was merely "in advance of his day." But, in spite of these defects, it is most useful from the modern practical point of view, as it emphasises marked and widespread abnormality *of conduct* as the true essential feature of insanity. That must be considered the "acid test" to-day.

This view was substantially confirmed by Lord Haldane in the fairly recent Scotch case of *Sivewright* v. *Sivewright's Trustees* [1920] S.C. (H.L.) 63. That case, in spite of certain somewhat puzzling observations contained in that speech (see Mortimer's "Probate Practice," p. 55, note (*y*)), appears to have followed the general doctrine laid down in *Banks* v. *Goodfellow* (see *supra*) that a "partial delusion" does not necessarily destroy testamentary capacity. Lord Haldane expressed himself in words, reported on p. 64 of [1920] S.C. (H.L.) which are helpful. He said: "It is not sufficient that the man who disposes of his property should be occasionally the subject of a delusión. The delusion must be shown to have been an actual and impelling influence."

Whatever respect is paid to *Dew* v. *Clark*, it would be wise, in these days of so-called "broad-mindedness," to attach far more value to marked and widespread abnormality of conduct than to eccentric and apparently unfounded beliefs. "Delusion" is as hard to define as insanity itself, and the practical lawyer, in sifting the evidence for or against insanity in any particular case, will not rely too much on mere delusions.

In the course of his speech in *Sivewright* v. *Sivewright's Trustees*, Lord Haldane referred to *Jenkins* v. *Morris* (1880), 14 Ch. D. 674, which he called "one of the most remarkable decisions in the books." It is certainly a very remarkable case, especially when one realises that it is comparatively modern. By the decision in it a lessor was held competent to make a lease of a farm, though (1) he was under the delusion that the farm and those who went on it were impregnated with sulphur, and (2) he was in the habit of administering castor oil to himself and those about him, apparently in the hope of dispelling the malign influence. (Some might say that the "castor oil habit" simply showed that he was a man "in advance of his time"!)

Selby v. *Jackson* 6 Beav. 192 was an even more remarkable case. An unfortunate man, an inmate of an asylum, was liable to such fits of maniacal violence that he was constantly kept in fetters. These fetters were removed to enable him

to execute some deeds, and, it was alleged, they were replaced immediately afterwards. Despite all these factors, the deeds were held to have been validly executed. In *Towart* v. *Sellars* 5 Dow. (H.L.) 231, 236, there is mentioned the case of *Faulder* v. *Silk* (1811), in which a deed was held valid which had been executed during a lucid interval and in actual contemplation of a relapse. The circumstances in most of these cases were unusual, but one cannot help wondering if the decisions would have been the same had the cases been heard to-day.

The doctrine of the "lucid interval" and its deductions has been severely criticised by many eminent medical practitioners. The late Sir Maurice Craig, one of the most famous psychiatrists of modern times, wrote of the legal aspect of the doctrine in somewhat contemptuous terms (see "Craig and Beaton's Psychological Medicine," 4th ed., 1926, p. 420 *et seq*). Craig apparently held the opinion, so widely entertained outside the legal profession, that the question of sanity or insanity should be decided on its merits, without "legal presumptions or doctrines." In theory, a good case might be made out for the proposition. But it must be borne in mind that Sir Maurice Craig, like most of those who support that view, was in favour of cases, where mental capacity was concerned, being tried by a tribunal consisting of, e.g., a judge assisted by two experts in mental disease, as assessors.

The arguments for and against such a method are numerous. But one thing will be admitted by most of those who have had experience of the present procedure in regard to such cases. So long as that procedure continued, the dangers of decisions "unfettered by legal presumptions or doctrines" would be great. The complexities would be more likely to increase than diminish.

Such would be the conclusion of most of those who heard the evidence in the recent Chancery case referred to above. The complications of these cases are generally immense, and no judge, or juryman for that matter, would welcome the task of deciding them purely on their merits without "legal presumptions or doctrines." Without these we should, to quote the present Lord Chief Justice, be embarking on a shoreless sea.

The practising lawyer, at any rate, is only too glad of any rules which will help him in sifting the evidence and applying the law in such cases. He should find the following propositions of some practical value:—

(1) More weight should be attached to abnormal conduct than to strange ideas and conceptions, however unfounded these may appear to be (see *Smith* v. *Tebbitt*, and *Sivewright* v. *Sivewright's Trustees*, *supra*).

(2) All conduct should be considered which in any way shows signs of the "perversion of the Ego," in its sense of the marked change for the worse in the man's character and mental capacity, and in its further sense of the isolation of the man from the rest of his species in thought and in action.

(3) Evidence should not be rejected merely because it amounts to no more than evidence of "moral insanity," despite *Frere* v. *Peacocke* (see *supra*).

(4) Family history, and the remote history of the person in question should be treated as of only secondary importance from the legal aspect. This is one of the instances, less frequent than is popularly supposed, where there is a wide difference between the medical and legal standpoints. The legal basis is recognised to be narrow. "We narrow the issue to the question: 'Was this man capable of making this particular will at the time of its execution?'" A. Wood-Renton, "Testamentary Capacity in Mental Disease" (the article above referred to), L.Q.R. 1888, at p. 448.

These four propositions are not, of course, intended to form any kind of exhaustive summary. But they should prove useful in applying the law to problems which appear to be growing more important and more complicated every day.

References.

[Contributed.]

It is the usual and common practice for the intending lessee of premises to give amongst other references the name of some bank—indeed the lessor as a rule asks for such information to be supplied. The general opinion is that it is hardly possible to have a sounder reference than a bank, but a few minutes' consideration will show that this is not so. In very many cases what does the bank manager really know about the funds standing to the credit of a person's name? The fund may be large and yet not belong to the person in whose name it is—thus he may be a trustee or a solicitor or estate agent, and, if the account has not been earmarked in any way so as to show, e.g., that it is a trust account or is made up of client's money, the customer may apparently have a very good account at the bank. Such information tells one nothing about a person's real financial position, and an owner of property may thus be induced to grant a lease to a person who is anything but a respectable and responsible tenant. And there are probably many people who are only too ready to use a fictitious credit for the purpose of obtaining the grant of a lease.

Of course this was not always so. There was a time when doubtless a bank reference was of some value, and when people did not so lightly take premises of which they could not pay the rent. But since the Great War there has been a distinct decline in all classes of the sense of responsibility for the due fulfilment of obligations solemnly undertaken. Another post-war factor is doubtless the instability of residence that is such a prominent feature nowadays. Tenants move from house to house and flat to flat with almost the same lightheartedness with which they go off for a holiday, whereas in earlier days they remained for very much longer periods in one place. The relation of landlord and tenant may be the last relic of tenure left to us by the property legislation of 1925, but assuredly the modern tenant has little or no sense of this relationship. But amongst all classes nowadays there is a sad lack of realisation of the sanctity of contract, and modern legislation in regard to landlord and tenant has not improved matters.

What is the result of all this? In most cases the tenant of the type with which I am dealing pays the first few quarters' rent promptly enough, but after a while the inevitable crash comes and the landlord is left to whistle for his rent; it being so often utterly impracticable to take any sort of proceedings to recover it. In one way or another, legitimately or illegitimately, the fund which induced the bank manager to give a reference has been dispersed, and the tenant having no real resources of his own cannot meet his obligations.

And now as to the remedy. I am not suggesting that it is the bank's fault, though there may be instances in which they have given a reference too readily—it is just one of the phenomena of our modern post-war world. But all the same it is a most sinister feature and something ought to be done about it. I suggest that the only references that are of any good are those from a previous landlord and those obtained through the agency of a trade protection society. From the first source can be ascertained the length of time that the proposed tenant held his previous premises, and whether or not he punctually paid his rent, whilst the second owing to its far-reaching ramifications, can give information as to the dealings with traders entered into by such persons, and whether bills have been duly met.

There is no doubt that landlords should in their own interests adopt such means of ascertaining the *bonâ fides* of anyone applying to them for a lease. And if this were regularly done it would be in the interests also of the property-owning public generally, since the undesirable type of tenant would find it less easy to obtain leases. I have been told by a prominent estate agent that the question of the defaulting

and absconding tenant, against whom legal remedies are of little or no avail, is a crying scandal in the West End of London. It is high time that something was done to bring this state of affairs to an end.

Company Law and Practice.

The Meaning of "Officer" in connection with Misfeasance and s. 276.

It will be remembered that s. 276, which deals with the question of misfeasance, is in the terms following, that is to say, by sub-s. (1): "If in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager or liquidator, *or any officer of the company*, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the court may, on the application of the official receiver, or of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator, or *officer*, or compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sums to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance, or breach of trust as the court thinks just." We should observe, in passing, that the contents of the two following sub-sections whereby (sub-s. (2)) the provisions of the section are to have effect notwithstanding that the offence is one for which the offender may be criminally liable, and (by sub-s. (3)), where the winding up takes place in England and an order for payment of money is made under the section, the order is to be deemed to be a final judgment within the meaning of s. 1 (1) (*g*) of the Bankruptcy Act, 1914.

There have been numerous decisions on the meaning of the expression "officer," in the corresponding sections of previous Acts, and these authorities have dealt with the position, in connection therewith, of such widely differing official personages as auditors, bankers, executors, solicitors and trustees, and it is to some of these cases that I intend to devote these columns to-day, dealing in alphabetical order with those five classes of persons.

To consider first the position of auditors: In the case of *In re London and General Bank* [1895] 2 Ch. 166, the court was concerned with the tenth section of the Companies (Winding-up) Act, 1890, which was repealed by the 1908 Act, s. 10 of the former being replaced by s. 215 of the latter Act, and this last section being reproduced in its turn by s. 276 of the 1929 Act. In point of fact, s. 10 of the 1890 Act was in substance the same as s. 276, save that the first speaks of "or other officer of the company" instead of "or any officer of the company," which words I have italicised above. The company was a banking company registered as a limited company after the passing of the 1879 Act, and the auditors in question were appointed pursuant to s. 7 thereof, whereby the company's accounts had to be audited by auditors appointed annually by the company, and they were defined by the articles as "officers" of the company. In the opinion of Lopes, L.J. (at p. 172), had it not been for the word "misfeasance" in the section concerned, an auditor such as one in the circumstances of that case would not come within the meaning of the section. He continued: "I should have thought that the section, if that word had been absent, was rather directed against those who had to carry out the business and purposes of the company, who had the control over the assets of the company, who had the conduct of the business, and who might have the money or the property of the company in their hands, which they might apply, retain, or restore. But I find the word 'misfeasance,' and as I understand the word 'misfeasance' in this section, it means a breach of duty." He pointed out that an auditor might commit a breach of duty by preparing false accounts, in collusion with the directors, and thus involve a misapplication of the assets—a mischief which the section was intended to prevent. Kay, L.J., pointed out, in the course of his judgment, that there might be cases of a company which calls in an auditor to make a particular audit where the auditor called in could not be properly treated as an officer of the company, and that misfeasance in the section must mean misfeasance other than the misapplication or misappropriation of the company's property. The court placed great reliance on s. 7 of the 1879 Act, and on the interpretation clause, which I have quoted in that company's articles, and accordingly, held that, in these circumstances, the company's auditors could be held liable for misfeasance within s. 10 of the 1890 Act; the particular acts here complained of being the presentation of false accounts, resulting in the payment of dividends out of capital. This decision was followed in the case of *In re Kingston Cotton Mill Company* [1896] 1 Ch. 6, and applied to the position of an ordinary commercial company, of which the auditor was appointed under articles of the company, which, so far as they concerned the audit of accounts, were in substantially the same terms as the audit clauses of the then current Table A, and as the relevant articles in *In re London and General Bank, supra*. Vaughan-Williams, J., propounded certain general principles in the course of his judgment, which have been summarised in the headnote to the report: "In every case where an auditor of a company is appointed under articles . . . which impose upon him the duty of examining the balance sheet and reporting to the members whether, in his opinion, it is a full and fair balance sheet, containing the particulars required by the articles . . . and properly drawn up so as to exhibit a true and correct view of the company's affairs, he is an officer of the company within s. 10 of the Companies (Winding-up) Act 1890." The Court of Appeal affirmed the decision of Vaughan-Williams, but it resolutely refused to express any opinion upon the general observations that he had made, and it would go no further than say that, in a case identical with *In re London and General Bank*, as it took the present case to be in substance, the auditor is an officer of the company. The question was again considered in *In re Western Counties Steam Bakeries and Milling Company* [1897] 1 Ch. 617. The effect of that decision may be summarised by saying that an auditor may or may not be an "officer" of a company, and *primâ facie* he is not, but his appointment to the office of auditor to the company and his acting in that office, will make him an "officer" within s. 10 of the 1890 Act, and he cannot use an irregularity in his appointment as a defence to a misfeasance summons in respect of dividends declared on the faith of his audit. But, as s. 10 does not mention "auditor," the performance of his work on a given occasion by a person who has never been appointed to the office of auditor to the company, does not make that person an "officer" of the company so as to render him liable under the section. For further decisions dealing with the matter, I must refer my readers, owing to the restrictions of space, to the authorities set out in the text-books, and, generally, to the monumental case of *In re City Equitable Fire Insurance Company Limited* [1925] 1 Ch. 407.

As to bankers, the very involved case of *In re Imperial Land Company of Marseilles*, 10 Eq. 298, is usually quoted as an authority for the proposition that a company's banker is not an officer of the company. The *ratio decidendi* is set out on p. 310 of the report, and, briefly, is founded on a comparison of ss. 100 and 165 of the 1862 Act; and, beyond referring to *In re Western Counties Steam Bakeries and Milling Company, supra*, where Lindley, L.J., observed, at p. 627, that a banker may or may not be an officer of a company

and *primâ facie* he is not such, and cited *In re Imperial Land Company of Marseilles*, we need not trouble ourselves further with the position of a banker.

With regard to executors, it was decided in *In re East of England Bank: Fellow's Executors Case*, 1 Eq. 219, that s. 165 of the 1862 Act (being the section corresponding to the present s. 276) did not apply as against the executors of a deceased director. Kindersley, V.-C., formed this conclusion upon a consideration of the words in the section "compel him to pay," as opposed to the words "make an order directing payment to be made," in another section (s. 10) dealing with debts due from the estate of a deceased person, whose personal representatives are on the list of contributories. He observed that, by sound reasoning, s. 165 could not apply to the executors or administrators of a deceased person, for the court could not, in a winding-up, administer a deceased's estate, and so compel payment of debts due from it: and it could only make an order directing payment from the estate, and then the estate might be administered in the ordinary course by suit. Hall, V.-C., had occasion to refer to this decision in *In re British Guardian Life Assurance Company*, 14 Ch. D. 335, at p. 340, and took the view that, in considering the language of the section with reference to criminal responsibility, there was a total absence of power to investigate under it the conduct of a dead man; and he followed the construction of Kindersley, V.-C.; see also *Shepherd* v. *Bray* [1907] 2 Ch. 571.

Now let us consider for a moment the position of a solicitor of a company. The two principal decisions in this connection are *In re The Great Wheal Polgooth Company Limited*, 53 L.J., Ch. 42, and *In re Great Western Forest of Dean Coal Consumers Company; Carter's Case*, 31 Ch. D. 496. Both cases decided that a solicitor of a company is not an officer of the company within s. 165 of the 1862 Act, so as to be amenable to the jurisdiction of that section. In the former, Bacon, V.-C., said in the course of his judgment (which, incidentally, well repays some study), at p. 47: "... it becomes of the utmost importance ... to know whether a man who acts as solicitor, and only as solicitor, thereby comes within the 165th section, and is to be called a promoter. That a banker is not an officer of the company, though his name is in the list of persons engaged in carrying on the company, has been very plainly decided. Why should I hold that because a solicitor's name is printed in the body of the prospectus he becomes a promoter? It seems to me to be a conclusion that I cannot for a moment draw." And again, in the latter case, Pearson, J., remarked that a banker had been held not to be an officer (he cited *In re Imperial Land Company of Marseilles, supra*), and to his mind a solicitor stood in the same position towards the company as a banker did: "I am at a loss to see how a solicitor by taking upon himself that professional duty (involved in doing business for the client company) puts himself in any other relationship to the company that he stands in to his other clients ... His remuneration is not a salary paid to him as an officer, but the ordinary remuneration ... according to the ... scale of fees." But it is in connection (*inter alia*) with the method of payment for his services that a solicitor may become an "officer" of a company; for, in the case of *Re The Liberator Permanent Benefit Building Society*, 71 L.T. 406, a solicitor who agreed to do all the work, as sole solicitor, that the society had for him to do, to forego, as far as the members of the society were concerned, all the ordinary rules with regard to payment, and to act practically as the society's financial manager, was held to be an officer within s. 10 of the 1890 Act; and see also, generally, the comparatively recent case of *In re Harper's Ticket Issuing and Recording Machine Limited; Hamlin* v. *The Company* [1912] W.N. 263.

Lastly, as to trustees, they may in certain circumstances be held to be "officers" of a company. They were so found in *In re British Guardian Life Assurance Company* [1880] W.N. 63 (an extremely short report), where it was sought to fix certain trustees with liability for misfeasance or breach of trust in not having duly invested in government securities a moiety of the premiums on whole life policies, which, it was contended, they should have so invested in their names for the benefit of the policy-holders. But in *Astley* v. *New Tivoli Limited* [1899] 1 Ch. 154, in the opinion of North, J., expressed at p. 154, trustees of a covering deed securing debentures (being trustees for the debenture-holders, and, as to the equity of redemption, for the company), which deed was primarily for the benefit of creditors, were not necessarily, as such trustees, officers of the company, and so liable for any misfeasance.

Landlord and Tenant Notebook.

Transfer of Burden of Covenant against Alienation.

According to its headnote, the decision in the leading case of *Williams* v. *Earle* (1868), L.R. 3 Q.B. 739, laid it down that a tenant's covenant not to assign or sub-let without the consent of the lessor ran with the land. In ninety-nine cases out of a hundred, no doubt it will; but the judgment itself, it should be noted, does not generalise; all that was decided was that the particular covenant in the particular lease ran with the land.

The lease, granted for fourteen years in and from 1859, demised some iron works; and shortly after its commencement the term became vested in the defendant. He experienced difficulties, and in 1865 gave up business. Next year, without seeking the necessary consent, he assigned the residue of the term to an assignee described as being the editor of the *Cricketers' News*. Thereupon the landlord took proceedings.

Blackburn, J., observed, somewhat laconically, "I have been unable to perceive, after listening attentively to the arguments of the counsel for the defendant, any reason why this covenant should not be considered a covenant touching and concerning the land." But his Lordship went on to give a positive reason for his decision; the object of the covenant was clearly that the landlord should continue to have some voice in the question who was to occupy the premises he had demised. It is interesting to note, though, that when it came to citing actual authority, the learned judge had recourse to such a case as *Bally* v. *Wells* (1769), 3 Wils. 25, which was not even a landlord-and-tenant case, but was brought by a rector who had farmed out tithes to the defendant, stipulating that no one else was to take over. It was held that the covenant "ran with the tithes"; hence the analogy.

As a matter of fact, it had once been held, at a still earlier date, that a particular tenant's covenant not to assign did not run with the land. This was in *Whitchcroft* v. *Fox* (1617), Cro. Jac. 398. A lease for a term of ninety-nine years had been granted to one G. Fox, who had covenanted not to assign to anyone but his wife or one of his youngest brethren, upon pain of forfeiture. He had assigned to a younger brother, who had assigned in turn to a stranger, Hopton. Hopton died and his wife and executrix Lucy Hopton entered and paid rent to the plaintiff. There was some difference of judicial opinion on the question whether G. Fox had power to assign to his brother while his wife lived, but it was resolved that if he had, the latter was free to assign to whom he pleased. Apart from that, acceptance of rent had waived any breach, so the decision is indeed *obiter*. But it serves to show that there may be a covenant against alienation which does not run with the land. Text-books sometimes read as if covenants were divisible into classes, sharply distinguished, no member of one class having features common with a member of any other class; such division, of course, makes for convenience, but accuracy may suffer.

More recently, the point has been raised in *Goldstein* v. *Sanders* [1915] 1 Ch. 549, and in *Re Robert Stephenson & Co.*

Ltd., Poole v. *The Company* [1915] 1 Ch. 802. The former was a claim for possession brought against the assignee of an intending tenant. In 1900 the plaintiff's predecessor had agreed to grant a lease for twenty-one years to two tenants. The lease was to prohibit alienation without consent. In 1912 they assigned the benefit of the agreement to H. In 1913 the plaintiff acquired the reversion. In 1914 her solicitors approached H., asking him in effect what he was doing there, and would he complete the lease. His reaction was to agree to sell his interest to the defendant. The defendant then applied for the necessary consent. The plaintiff (who was busy with other things, the disrepair of, and some unauthorised alterations to, the premises causing her some concern) did not answer promptly, and the assignment went through. It was held that the covenant, or at all events the covenant which would have been in the lease which would have been granted to H. pursuant to the agreement, bound him. In *Re Robert Stephenson and Co. Ltd., Poole* v. *The Company*, which was heard only a few months later, the matter arose in this way. The company were the assignees of a long underlease. The assignment to them had been under licence in accordance with a covenant against alienation. A scheme had been made under which their assets were to be transferred to another company, and the question, submitted by an originating summons, was whether a licence was necessary for this proposed assignment of the residue of the term. The only indication of intention to help them was that the underlease specified that where it used the term "lessors" the lessors' assigns were to be included, while there was no corresponding interpretation clause dealing with "lessees." Held, this did not displace what now amounted to a presumption that such a covenant ran with the land.

The introduction into the argument in the above case of the question of assigns mentioned or not mentioned serves to remind us of a doubtful distinction now disposed of by L.P.A., s. 79. The point rested on *Spencer's Case*, and it was never quite clear whether the scope of the proposition that assigns were not bound unless named was not limited to covenants affecting things not yet in being at the commencement of the term. The judgment of Blackburn, J., in *Williams* v. *Earle*, dealt with at the commencement of this article, was based partly on the fact that the covenant against alienation had been entered into on behalf of the lessee and his assigns; indeed, he took the opportunity of emphasising this factor and resenting counsel's failure to appreciate it when hearing the case of *West* v. *Dobb* (1869), L.R. 4 Q.B. 634, the following year. That case, however, was decided on a different ground, namely, that there had been no assignment of a term but merely a parting with possession.

Our County Court Letter.

THE SCOPE OF DEMOLITION ORDERS.

In a recent case at Nottingham County Court (*Chawner* v. *Nottingham Corporation*) appeals were heard against orders for the demolition of four houses in Old Basford. The case for the respondents was that, although the houses were not back-to-back, in the ordinary sense, two of them backed on to a workshop and another on to a garage. The houses were at least 100 years old, the walls were 4½ inches thick (as opposed to 9 inches under the present bye-laws), the floors were 2 inches below the street level, and 12 inches below the ground level at the back. A gable wall, of soft sandstone rubble, was saturated with moisture and the drainage was inadequate. The density of the houses was fifty-eight to the acre, whereas anything over thirty to the acre constituted overcrowding. The houses could not be rendered fit for habitation by a reasonable expenditure. The appellant's case was that, on buying the houses in 1920, he had not only spent £166 on the improvement of sanitation, but had received a contribution of £50 from the corporation. A damp course could safely be inserted, and the appellant was ready to spend the money required, as there was a demand for such houses for single tenants. His Honour Judge Hildyard, K.C., having inspected the property, observed that dampness was not the only question, as the other defects had to be borne in mind. The appeals were dismissed, with costs.

MOTORIST'S LIABILITY FOR REPAIRS.

In the recent case of *Parkstone Motor Co. Ltd.* v. *Smart*, at Bournemouth County Court, the claim was for £73 8s. 9d. for work done and materials supplied. The plaintiffs' case was that they had repaired the defendant's car, on the instructions of his insurance company, which had since gone into liquidation. The company, however, had merely acted as the agents of the defendant, who was liable as the principal debtor. The defendant denied liability, as he had not ordered the repairs, and there was no contract between him and the plaintiffs. The insurance company had rendered themselves liable, in accordance with the policy. His Honour Judge Hyslop Maxwell held that the mere fact that the insurance company approved the estimate did not render them liable for the instructions. The repairs were executed on the authority of the defendant, and judgment was given for the plaintiffs for the amount claimed, with costs, payable at £4 a month.

THE CONTRACTS OF INJURED MINERS.

In the recent test case of *Parkin* v. *Harton Coal Co. Ltd.*, at South Shields County Court, the claim was for damages for breach of contract. The plaintiff had left work with nystagmus on the 28th July, 1928, and had received full compensation. After being off work for six months, he was removed from the books, in accordance with the usual practice in Durham. On the 13th July, 1932, the plaintiff was certified as fit for full employment, but was not re-engaged. His case was that there was no implied contract (as alleged) with regard to the removal of his name from the books. On the contrary, he was in the employ of the respondents all the time he was on compensation, and was entitled to fourteen days' notice or wages in lieu thereof. The defendants denied that the plaintiff was in their employ during the whole period of compensation. If work had been available, on his recovery, he would have been re-engaged, but only on his signing a new contract. His Honour Judge Thesiger gave judgment for the defendants, with costs, leave to appeal being given.

LIABILITIES OF FURNITURE REMOVERS.

In the recent case of *Blundell* v. *Pickering*, at Birmingham County Court, the claim was for £31 11s. 6d. in respect of damage to a piano. The latter had been in perfect condition before its removal in the defendant's furniture van, but it was subsequently unplayable. Investigation showed that the wooden wrest plank was split, and the plaintiff's evidence was that the piano had been bumped, as the defendant's men had misjudged the distance, in loading it on to the van. The defendant's case was that the split was not recent, as it was found to contain a cocoon of a moth, which must have laid its eggs in the spring, whereas the removal did not take place until the 31st August. The plaintiff had expressed her satisfaction at the manner in which the removal had been carried out, and—although her expert had admittedly inspected the piano—he had not given evidence on the question of the probable date of the crack. His Honour Judge Dyer, K.C., held that the plaintiff had not proved that the damage had arisen during transit, and judgment was given for the defendant, with costs. It is to be noted that a furniture remover usually makes a special contract, and is therefore not a common carrier. See *Electric Supply Stores* v. *Gaywood* (1909), 100 L.T. 855. In the above case, however, the defendant was a common carrier, as he held an "A" licence from the Traffic Commissioners.

RECENT DECISIONS UNDER THE WORKMEN'S COMPENSATION ACTS.

ADDED PERIL.

In *Rossiter* v. *Constable, Hart & Co., Ltd.*, at Weston-super-Mare County Court, the applicant had been a time-keeper at the works of the respondents, who were engaged on sewer and road construction at Burnham-on-Sea. While attempting to deliver a message to the foreman, during the night of the 11th April, 1935, the applicant had fallen under a pumping engine, and had sustained spinal injuries. The respondents denied that the accident had arisen out of and in the course of the applicant's employment, as he had no authority to be on any part of the works at the time in question, and was actually there for a purpose outside the scope of his employment. A surveyor gave evidence that, being retained by the landowners, he had been desirous of conveying a message to the respondents' foreman, with reference to the drainage of adjoining land. Having doubts as to the reliability of the night watchman, the surveyor had also given a message to the applicant. The latter had had the accident while making arrangements for the delivery of the message, and the respondents contended that he was not then acting under his contract of service with them. His Honour Judge Parsons, K.C., upheld this contention, as the applicant had merely been performing an act of courtesy towards the surveyor of a third party. Judgment was given for the respondents, with costs.

ACCIDENTS IN DEMOLITION WORK.

In *White* v. *Roberts*, at Cheltenham County Court, the applicant had been employed as a builder's labourer at Pittville House, which was being converted into two dwellings. While clambering round a wall, the applicant had fallen six or seven feet, and had sustained a fractured ankle. The respondent's case was that he had warned the applicant about taking such risks, as he was really a painter, and unused to the work he was doing. After the accident, the applicant had admitted he had done a silly thing, although he had not been blamed for it at the time. His Honour Judge Kennedy, K.C., held that the applicant had not been given any explicit instructions about clambering round the wall, and he was not taking an unreasonable or abnormal risk in so doing. The risk was incidental to the work, and the accident had arisen not only in the course of but also out of the applicant's employment. An award was made of £1 a week, with costs.

INJURY TO BOTTLE WASHER.

In *Cope* v. *Tamworth Dairy Co. Ltd.*, at Walsall County Court, the applicant had sustained a cut wrist, while working on a bottle washing machine, owing to the bursting of a bottle. A nerve had been severed, and, after two operations, she returned to work on a rinsing machine. Having previously received compensation, on the basis of total incapacity, she was then paid 10s. a week wages and 7s. 6d. as compensation, although her pre-accident wages were £1 a week. She worked on the rinsing machine from April to July, 1935, when pains in the shoulder and wrist caused her to leave. Compensation was only paid until the 22nd November, but the applicant's medical evidence was that full recovery was impossible, as the pain was due to cramp, caused by over-action of the remaining muscles. The respondents' case was that work on the rinsing machine was still available, at £1 a week. Their medical evidence was that there was no cause for complaints of pain in the wrist and shoulder, and the applicant was capable of doing the work offered. His Honour Judge Tebbs remarked that compassionate employment was never the same as earning capacity. In view of the partial disablement, an award was made of 9s. a week as from the 24th July, 1935, less the amount paid into court, with costs.

Books Received.

Prideaux's Forms and Precedents in Conveyancing. Vol. I. Twenty-third Edition. 1936. By Ranald Martin Cunliffe Munro, B.A., and Sir Lancelot Henry Elphinstone, M.A., both of Lincoln's Inn, Barristers-at-Law. Royal 8vo. pp. lxxxvi and (with Index) 963. London: Stevens & Sons, Ltd.; The Solicitors' Law Stationery Society, Ltd. £2 2s. net.

Paterson's Licensing Acts with Forms. Forty-sixth Edition, 1936. By Sir John Pedder, K.B.E., C.B., and E. J. Hayward, O.B.E., Clerk to the Justices for the City of Cardiff. Crown 8vo. pp. cxxiv and (with Index) 1650. London: Butterworth & Co. (Publishers) Ltd.; Shaw and Sons, Ltd. 22s. 6d. net. Thin paper, 3s. 6d. extra.

Stone's Justices' Manual, 1936. Sixty-eighth Edition. Edited by F. B. Dingle, Solicitor, Clerk to the Justices, etc., for the City of Sheffield. Demy 8vo. pp. ccxcviii and (with Index) 2474. London: Butterworth & Co. (Publishers) Ltd.; Shaw & Sons, Ltd. 37s. 6d. net. Thin paper, 5s. extra.

Obituary.

Mr. J. F. BAXTER.

Mr. James Frederic Baxter, solicitor, head of the firm of Messrs. Chapman & Baxter, of Whitehaven, Cumberland, died recently at the age of thirty-four. Mr. Baxter, who was educated at St. Bees School, served his articles with his father, the late Mr. J. D. Baxter, and was admitted a solicitor in 1924. He was clerk to the West Cumberland Fishery Board and deputy-chairman of the Unemployment Assistance Board Appeals Tribunal.

Mr. J. B. BECKTON.

Mr. John Backhouse Beckton, solicitor, of Carlisle, died in a nursing home at Carlisle on Thursday, 23rd January. Mr. Beckton served his articles with Mr. David Main, of the firm of Messrs. Blackburn & Main, of Carlisle, and was admitted a solicitor in 1904. He was clerk to the Silloth Parish Council and the Holme St. Cuthbert's Parish Council, and also clerk to the Wampool and Waver Catchment Board.

Mr. W. B. CUMBERLAND.

Mr. William Bentinck Cumberland, solicitor, a partner in the firm of Messrs. Salmon, Cumberland & Evans, of Bristol, died in a nursing home at Clifton on Tuesday, 14th January, at the age of sixty-five. Mr. Cumberland was admitted a solicitor in 1894.

Mr. P. MARTIN.

Mr. Percy Martin, retired solicitor, of Gorleston, died on Thursday, 9th January, at the age of eighty. Mr. Martin was admitted a solicitor in 1879, and practised at Great Yarmouth for many years.

Mr. R. W. MILLER.

Mr. Reginald Walter Miller, retired solicitor, of Cromer, died recently in his seventy-sixth year. Mr. Miller served his articles with Messrs. Wadsworth, Wadsworth & Ward, of Nottingham, and was admitted a solicitor in 1884. He practised at Nottingham until his retirement about six years ago.

CORRECTION: Mr. C. R. Steele.

We are indebted to Messrs. Francis Miller & Steele for drawing our attention to an error which appeared in our obituary notice of the late Mr. C. R. Steele last week. In that notice his names were given as Cyril Richard instead of Charles Richard. We hope this error has not caused any inconvenience.

To-day and Yesterday.

LEGAL CALENDAR.

27 JANUARY.—Mr. Baron Alderson died on the 27th January, 1857, in his seventieth year, after more than twenty-six years' judicial service.

28 JANUARY.—Not content with his escape from punishment after his "No Popery" riots, Lord George Gordon soon plunged into more trouble. When the adventurer Cagliostro fled from France to England after the diamond necklace scandal, Lord George took him up and inserted in the "Public Advertiser" a couple of paragraphs defamatory of Queen Marie-Antoinette. He also wrote a pamphlet denouncing the severity of the English criminal law as inconsistent with the Mosaic code, and tried to obtain admission to Newgate, where he expected, reasonably enough, to find support for his opposition to hanging and transportation. He got in, in a way he did not expect, for having been convicted of libel, he was on the 28th January, 1788, sentenced to five years' imprisonment.

29 JANUARY.—On the 29th January, 1326, Sir Roger de Beler, a Baron of the Exchequer, while on his way from Kirby to Leicester, was murdered in a valley near Reresby, by Sir Eustace de Folville, lord of the neighbouring manor of Ashby, and his brother. He was buried at Kirby in the Church of St. Peter, under a monument with his effigy in armour carved in alabaster. He had been a judge for four years. His violent end was probably a vengeance for certain judicial proceedings

30 JANUARY.—Orlando Bridgeman, born on the 30th January, 1608, was the son of Dr. John Bridgeman, who afterwards became Bishop of Chester. By the time the troubles of Charles I's reign had come to a head, he was already a prominent lawyer. In 1640 he was elected to the Long Parliament for Wigan, and zealously supported the Royalist interests. Before the end of the year, he was knighted. On the triumph of the Parliament, he passed into retirement, emerging at the Restoration to become First Chief Justice of the Common Pleas and then Lord Keeper.

31 JANUARY.—On the 31st January, 1410, Sir Thomas Beaufort, one of the few laymen to hold the Great Seal in the Middle Ages, became Lord Chancellor. His tastes were in the camp rather than in the law, and in the following year he prayed to be discharged from his office. It was two years, however, before he was allowed to retire. He found his true vocation under Henry V, distinguishing himself in the French Wars. After the King's death, he was constituted guardian of his infant successor. By that time he was Duke of Exeter and a Knight of the Garter. In his later years, he acted as a justice of North Wales.

1 FEBRUARY.—It was as the advocate of Queen Caroline, when George IV would have divorced her, that Brougham won fame. Later, he acted as executor of Adelaide, William IV's Queen. In that capacity, he brought an action against the Lords Commissioners of the Treasury, claiming for her estate the quarter of her annuity of £100,000 falling due on the quarter day after her death. The claim failed, Lord Campbell, C.J., giving judgment on the 1st February, 1851, said with regard to arguments resting on her "exalted rank": "We are at a loss to know how this should influence the construction of the language by which provision is made for her. We might as well be told of her exemplary virtues while living and of her saint-like death, which will ever make her memory cherished with affection and reverence."

2 FEBRUARY.—On the 2nd February, 1804, Lord Alvanley, C.J., told the following story in the course of a horse-dealing case in the Common Pleas. A member of the Bar bought a horse to ride on circuit, but when he got the animal home and his servant mounted him to show his paces, he would not stir a step. The barrister complained to the dealer, asking how he came to sell him a horse that would not go. "I sold you a horse warranted sound, and sound he is," replied the man, "but, as to his going, I never thought he would go."

THE WEEK'S PERSONALITY.

Though Mr. Baron Alderson was in his seventieth year, his breakdown and death came as a surprise, for during the Long Vacation of 1856, which he passed at Dieppe, he displayed the best spirits and the greatest vigour. Later, he presided at the Liverpool Assizes with unusual force and ability. Then came the sudden news of the grave illness of his third son. "I shall never go another Circuit," he exclaimed, with slow emphasis before he left the town to hasten to the bedside. But the condition of the invalid improved, and at Christmas the old judge gathered round his table, as he loved to do, his family and friends. Although in the course of the day he complained of headache and seemed oppressed with unusual sleepiness, no one was seriously alarmed, but, ten days later, he was attacked by giddiness which was followed by a strange quietude and lack of interest in things around him, and finally, by complete unconsciousness. Once "he opened his eyes to recognise and address with the fondest affection each individual around his bed—to express with something almost of rapture, but with perfect calmness, his joy in having those whom he most loved around him and to join with them in receiving the Holy Communion . . . For ten days he lay with no material change in his condition, at the end of which time it became clear that he was rapidly sinking, and on the afternoon of 27th January, 1857, in the same perfect repose, with two gentle sighs, he breathed his last."

YELLOW RUFFS.

Those who followed the recent case at Bow-street, in which the right of the Dean of Westminster to exclude the public from the Abbey was challenged, will have noticed a reference to the action of that Dean who, in 1620, forbade entry to all women in yellow ruffs, and may have wondered what was behind the veto. The scandal of the yellow ruff lay in the story of sweet Anne Turner, its originator, who eventually went to the gallows in it, in November, 1615. She was one of the smaller fry who were swept into the net of the law when the dramatic death of Dr. Forman, the wizard astrologer of Lambeth, and the revelation of his ledger accounts and poison dealings plainly involved the lovely and wanton Countess of Essex in the mysterious murder of Sir Thomas Overbury, in the Tower of London, two years before. The great lady threw herself on the King's mercy and received the royal pardon, but poor little Anne Turner who, acting as confidante and go-between, had served her faithfully and devotedly, was claimed by the law as its destined victim.

SWEET ANNE TURNER.

Mistress Anne, revelling in the sunshine of the Countess's patronage, had flitted gracefully from love affair to love affair in her fantastic yellow starched butterfly ruffs. Now for her trial she had put on a bewitching hat which wholly failed to impress the brutal Chief Justice Coke, who ordered her to take it off as she was not in church, telling her that "no secrets were hid from God, but not so with men . . . therefore, all covering should be taken from the face." Perhaps had she uncovered yet more of her charms, the scene of Phryne's triumphant acquittal by the susceptible jurymen of ancient Greece might have been repeated in Jacobean England, but it was not to be so. A stolid British jury, handling with disgust and fear the charms and parchments of the dead wizard, agreed with the judge that she had the seven deadly sins and found her guilty. So she travelled along the Oxford-road to Tyburn, wearing for the last time her yellow bands and playing the part of the repentant Magdalene most charmingly. But after that time, that particular fashion bore a taint.

Notes of Cases.

Judicial Committee of the Privy Council.

McPherson *v.* **McPherson.**

Lord Blanesburgh, Lord Macmillan, Lord Wright.
16th December, 1935.

PROCEDURE—ALBERTA—DIVORCE PETITION HEARD IN JUDGES' LIBRARY—PUBLIC NOT ACTUALLY EXCLUDED—RULE OF PUBLICITY—EFFECT OF IRREGULARITY.

Appeal by Mrs. C. L. McPherson from the judgment of the Supreme Court of Alberta (Appellate Division), dated the 21st February, 1933, affirming the decision of Ewing, J., in the Supreme Court of Alberta, dated the 20th December, 1932, dismissing a preliminary issue in an action brought by Mrs. McPherson to have a decree nisi obtained against her by her husband set aside on a number of grounds. After the institution of her action, Mrs. McPherson learned of circumstances upon which she then based an allegation that the trial of the divorce action (which had been undefended) had been secret. She thereupon amended her statement of claim and claimed that the whole of the divorce proceedings had been void. The issue as to the alleged secrecy of the trial was directed to be tried as a separate issue. Ewing, J., held that the trial had in fact been held in open court.

LORD BLANESBURGH, in giving the judgment of the Board, said that questions of wide general importance were raised by the appeal. In the matter of facilities for public access to the court rooms on the one hand, and to the judges' library, where the trial took place, on the other, there was a very great difference to be noted. To the court rooms direct public access was provided from a public corridor. But there was no such direct access to the judges' library. It was approached through a double swing-door in the wall of the same corridor. One wing of the door was always fixed—the other was usually unfastened. On the fixed wing was a brass plate with the word "Private" in black letters on it. The unfastened swing-door—the door to which alone when it was open the word "Private" had any sensible application—opened on to an inner corridor in which, opposite, was a door of the judges' library. It was accepted that the opening wing of the swing-door was unfastened during the trial, and it was proved that the inner door of the library was kept open throughout. There remained the serious question whether those swing-doors, with "Private" marked on one of them, were not as effective a bar to the access to the library by an ordinary member of the public as would be a door actually locked. Their lordships believed that it was unhealthy notoriety rather than normal publicity which the judge had desired to restrict. There was no actual exclusion of the public, although there was no actual public attendance. No such exclusion was intended or, possibly, even desired. But, even although it emerged in the last analysis that their actual exclusion resulted only from that word "Private" on the outer door, the judge on that occasion, albeit unconsciously, was, their lordships thought, denying his court to the public in breach of their right to be present, a right thus expressed by Lord Halsbury in *Scott* v. *Scott* [1913] A.C. 417, at 440: "Every court of justice is open to every subject of the King." To that rule there were strictly defined exceptions, but publicity was the hall-mark of judicial procedure, and it might safely be said that divorce proceedings were not within any exception. Their lordships were not surprised to find disclosed in the record traces of a practice existing in Edmonton, one not in their experience confined to Alberta, which seemed to regard too lightly the duty of hearing those suits in public and with all appropriate ceremony. There was perhaps no available way to correct those tendencies more effectively than to require that the trial of those cases should always take place and in the fullest sense in open court. That requirement must be insisted on because there was no class of case in which the desire of parties to avoid publicity was more widespread. Their lordships had felt impelled to regard the inroad on the rule of publicity made in this instance—unconscious though it was—as one not to be justified, and as one that must be condemned so that it should not again be permitted. There was, however, no authority for the proposition that this irregularity rendered the supervening decree void. It was voidable only, and the time for avoiding it had long passed. Any intervention had to be made before time for appeal had expired or the rights of third parties had intervened. The appeal accordingly failed.

COUNSEL: *Wilfrid Greene*, K.C., *Horace Douglas*, and *R. O. Wilberforce*, for the appellant; *S. B. Woods*, K.C., and *Frank Gahan*, for the respondent.

SOLICITORS: *Lawrence, Jones & Co.*; *Blake & Redden.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

High Court—Chancery Division.

Hayes and Harlington Urban District Council *v.* **Trustee of Jesse Williams (a Bankrupt.)**

Farwell, J. 20th December, 1935.

PRACTICE—BANKRUPT MORTGAGOR—MORTGAGEE'S PROOF IN BANKRUPTCY—ASSESSMENT OF VALUE OF MORTGAGED PROPERTY—FORECLOSURE ORDER—FORM—AMENDMENT TO INCREASE VALUATION.

Between January and June 1929, Williams, by several charges, charged 500 houses by way of legal mortgage in favour of the Council to secure sums which they had advanced to him amounting to £220,000 with interest. On the 1st November, 1934, when the whole sum owed to the Council amounted to £201,556 14s. 11d. a receiving order in bankruptcy was made against Williams, and the Official Receiver directed the Council to lodge the proof of their debt by the 14th November. For this purpose the Council's officials valued the mortgaged property at £160,000, at which sum it was valued in the proof. Williams was adjudicated bankrupt on the 22nd November. On the 21st November an originating summons for foreclosure of the mortgages was issued by the Council, valuing the property at £160,000. A foreclosure order *nisi* was made in chambers on the 30th January, 1935, in the form in "Seton's Judgments and Orders," 7th ed., vol. 3, p. 1892, declaring that as against the trustee in bankruptcy the plaintiffs were "entitled to hold the property comprised in the several legal charges as security for £160,000 with interest thereon at the rate at which the plaintiffs valued their security. . . ." In May, 1935, the Council, in view of further information, were minded to have the property valued, and subsequently received a report valuing it at £200,000. In October, by a motion before the Judge in Bankruptcy, the council sought leave to increase the valuation in their proof to that amount, but in November the learned judge held that amendment of the proof could not be considered while the valuation of £160,000 stood in the foreclosure order; he therefore adjourned the motion till application had been made in the Chancery Division for the purpose of altering the valuation in that order. The Council now asked that conditionally upon the Judge in Bankruptcy giving leave to amend the proof, the valuation of their security in the foreclosure order should be increased to £200,000, or alternatively, that they should be at liberty to appeal against the form of that order.

FARWELL, J., in giving judgment, said that he was not concerned with the question whether this was a proper case for the plaintiff Council to amend their proof in bankruptcy. It was irrelevant to this application. Under s. 62 of the Judicature Act, 1925, his lordship had power to discharge an order made in chambers if he thought proper. The application was very tardy. The form of order in Seton had been settled many years ago and followed ever since. If he was satisfied that the order was wrong and might work injustice, he ought

to accede to the application. Its effect as it stood was to deprive the plaintiffs of rights conferred by the Bankruptcy Act, and this in itself seemed justification for discharging it. Moreover, the order, in its present form, might operate to do injustice to the trustee in bankruptcy in the exercise of his right to redeem. The order should be discharged, but without prejudice to the right of the trustee to redeem each mortgage separately. All that would be done would be to enable the plaintiffs to make an application they could not otherwise have made. As this motion was necessitated wholly by them and they were asking for indulgence, they must pay all the costs. The order made by his lordship declared that the plaintiffs were entitled as against the trustee "to hold the properties respectively comprised in the several legal charges as security for the respective amounts of principal and interest due to them upon the security of such legal charges respectively, but without prejudice to the right of the trustee in bankruptcy to redeem the said properties or any of them at the respective values at which the same respectively may for the time being have been assessed by the plaintiffs."

COUNSEL: *Harman*, K.C., and *George Slade*; *Edgar*; *Henry Johnston*.

SOLICITORS: *Sharpe, Pritchard & Co.*; *Ridsdale & Son*; *Stilgoes*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re a Grant of King Charles II: Giffard *v.* Penderel-Brodhurst.

Bennett, J. 17th January, 1936.

TRUST—GRANT BY CROWN—ANNUITIES—ESTATES TAIL—ANNUITANTS' INTEREST IN NET PROCEEDS OF SALE—LAW OF PROPERTY (ENTAIL INTERESTS) ACT, 1932 (22 & 23 Geo. 5, c. 27).

In 1675, Charles II granted a number of rent charges to trustees on trust to pay certain perpetual annuities to seven persons and their issue in tail with a gift over to survivors on failure of issue and an ultimate reversion to the Crown. The estates tail were unbarrable (*Robinson* v. *Giffard* [1903] 1 Ch. 865). In 1923 the trustees acquired the Crown's reversion in trust for the annuitants at that time; the estates thereby became barrable and some of the annuitants barred their entail. The question arose whether now the annuitants became entitled, not as tenants in tail, but to an absolute interest. At some date, the annuities were treated as being reduced by one-fourth as some of the rents had failed. There was now more than enough to pay the reduced sums and a further question arose as to the disposal of the surplus.

BENNETT, J., in giving judgment, said that on the coming into operation of the Law of Property (Entailed Interests) Act, 1932, the several persons entitled to the annuities in which the estates were limited by the grant and who had not barred their entail, became entitled to a corresponding entailed interest in the net proceeds of sale. Subject to the retention of such sums as the trustees considered necessary to provide for their costs and expenses, the surplus should be distributed yearly among the persons entitled to the annuities rateably in proportion to their respective interests.

COUNSEL: *Watmough*; *Henty* (*Danckwerts* with him); *J. Redfern*.

SOLICITORS: *Gregory, Rowcliffe & Co.*, agents for *Fowler, Langley & Wright*, of Wolverhampton; *Hilder, Thompson & Dunn*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

King George was the Senior Bencher of Lincoln's Inn, and a short and impressive memorial service was held in the Chapel of the Inn on Tuesday afternoon. It was attended by over sixty Benchers and by many barristers and students. Lord Russell of Killowen, treasurer of the Inn, and a number of High Court judges were among those present.

High Court—King's Bench Division.

London County Council *v.* Stansell.

Lord Hewart, C.J., Goddard and Singleton, JJ.
13th November, 1935.

EDUCATION—PUBLIC ELEMENTARY SCHOOL—CHILD CLEANSED BY AUTHORITY OF COUNCIL—CHILD AGAIN IN CONDITION NECESSITATING CLEANSING—CHARGE AGAINST PARENT—LIABILITY OF MOTHER WHEN FATHER LIVING WITH HER—EDUCATION ACT, 1921 (11 & 12 Geo. 5, c. 51), s. 87 (1), (4).

Appeal by way of case stated.

At a court of summary jurisdiction sitting at Catford, an information was preferred on behalf of the appellants against the respondent, Florence Stansell, for that, being the parent of Alfred Stansell, a child attending a public elementary school, whose clothing had been cleansed by the council in pursuance of s. 87 of the Education Act, 1921, she did, contrary to sub-s. (4) of that section, allow the child to get into such a condition that it was again necessary to proceed under the section. On the hearing of the information, the following facts were proved or admitted: On the 14th November, 1934, an authorised person, acting on behalf of the council, examined the person and clothing of the child in the school and found them infected with vermin. On the 21st November, the appellants gave the respondent notice requiring her to cleanse the child within twenty-four hours. The respondent having failed to comply with the notice, an authorised person removed the child from the school on the 4th December, 1934, and caused it to be properly cleansed. On the 19th February, 1935, the same person again examined the child in the school and found it in a condition necessitating renewed cleansing under s. 87. The respondent, the mother of the child, was residing with her husband, who was the child's father. The child was living with them both. At the hearing, it was contended for the council that the word "parent" in s. 87 (1) of the Act of 1921, included a child's mother, whether or not the father was living with her, and that the local education authority might take proceedings against either parent at their discretion. The justices, on the authority of *Hance* v. *Burnett* (1881), 45 J.P. 54, and *Woodward* v. *Oldfield* [1928] 1 K.B. 204, in which it had been held that the parent having the *de facto* custody and control of the child was the proper person to be charged with offences under certain sections of the Education Acts, held that, where the father was not absent, he was the proper person to be charged, and that, in that respect, no distinction could be drawn between the present case under s. 87 of the 1921 Act, and cases arising under other sections. They were of opinion, further, that if the mother were convicted in the circumstances, there would be considerable difficulty in enforcing the penalty, whether by fine or by imprisonment. The Council appealed.

LORD HEWART, C.J., said that s. 87 of the Act of 1921 provided that where, on a duly authorised examination, the person or clothing of a child was found to be infected with vermin, the local education authority might give "notice in writing to the parent of the child, requiring him to cleanse properly the person and clothing of the child within twenty-four hours . . . ." Sub-section (4) provided as follows: "Where after . . . a child has been cleansed by a local education authority under this section, the parent of the child allows him to get into such a condition that it is again necessary to proceed under this section, the parent shall be liable to a fine not exceeding 10s." In his opinion, the justices had arrived at a correct conclusion upon the reasons which they had stated. The appeal must be dismissed.

GODDARD and SINGLETON, JJ., agreed.

COUNSEL: *Vernon Gattie*; there was no appearance by or on behalf of the respondent.

SOLICITOR: *J. R. Howard Roberts*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Marcelino Gonzalez y Compania S. en C. *v.* **James Nourse Limited.**

Branson, J. 13th and 14th November, 1935.

Shipping—Bill of Lading—"Liberty to Tranship"—Cessation of Ship's Responsibility at Ship's Tackles—Cargo Unloaded into Lighters and then Lost—Whether Breach of Contract.

The plaintiffs shipped a cargo of white rice on board the defendants' steamship. The bill of lading in respect of the shipment was dated the 4th June, 1933, and by its terms the rice was to be delivered at Havana "with liberty to tranship or land and re-ship on board the same or any other vessel or vessels," subject to certain exceptions, "in . . . good order and condition from the ship's tackles (where the ship's responsibility shall cease)" subject to further exceptions of which one was as follows: "the act of God . . . and . . . other dangers and accidents of the seas . . . of whatever . . . kind." In August, 1933, the ship, having arrived at Havana, was berthed at a wharf which had been designated by the ship's agents for the discharge of the rice. There was an arrangement, of which the plaintiffs knew, whereby the defendants had to remove any ship of theirs from the wharf when the owners of the wharf required it for one of their own vessels. In accordance with that arrangement the defendants moved their ship to an anchorage. There the rice was unloaded into lighters from which it was to be unloaded onto the wharf. The lighters, however, were struck by a hurricane and the whole cargo of rice was lost. The plaintiffs brought an action in respect of its value.

Branson, J., said that the plaintiffs alleged that the loading of the rice into lighters was a breach of the contract in the bill of lading, which contained the exceptions on which the defendants relied. The defendants said that the contract provided for discharge of the cargo at Havana in any usual way and that the circumstances of the discharge into the lighters had made it a usual way of discharge. It had been repeatedly held that where there is a custom of the port in regard to the discharge of the cargo, unless it is excluded by the contract, delivery in accordance with the custom is proper. Similarly, where, as in the present case, a well known practice as to discharge of cargo had been followed by a line of steamers at a particular port to the knowledge of the receiver of the goods, then, unless there was something in the contract or elsewhere which excluded that practice, it was not open to the receiver to object to it. It was said for the plaintiffs that the provision in the bill of lading that the defendants should have "liberty to tranship" applied only to transhipment into a steamer alongside and not into lighters. There was nothing in the bill of lading which so restricted the meaning of the words, and it was not possible to do so. Either practice was a usual performance of the contract. It was further said that the expression in the bill of lading that the goods should be delivered "from the ship's tackles (where the ship's responsibility shall cease)" excluded delivery of the goods into lighters. The answer to that contention was to be found in the case of *Marzetti* v. *Smith & Son* (1884), 49 L.T. 580, where it was held that a custom of the port of London for steamships to discharge goods on to the quay and thence into lighters was not inconsistent with an exactly similar provision in the bill of lading there in question. In the present case the contract, when fairly read in the light of the surrounding circumstances, was not broken by placing the goods in lighters as a step in the delivery of them, and the defendants were protected from liability for the loss of the goods by the exceptions in the bill of lading.

Counsel: *D. Davies*, K.C., and *Charles Stevenson*, for the plaintiffs; *H. U. Willink*, K.C., and *H. L. Holman*, for the defendants.

Solicitors: *Parker, Garrett & Co.; Holman, Fenwick and Willan.*

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Raahe Osakeyhtio *v.* **Goddard.**

Lewis, J. 18th and 20th November, 1935.

Contract—Goods not According to Specification—Provision against Rejection—Buyer's Rights—Goods up to Sample Mixed with Goods not up to Sample—Buyer's Right to Reject Whole—Sale of Goods Act, 1893 (56 & 57 Vict., c. 71), s. 30.

Appeal by the sellers from an award in the form of a special case stated.

The sellers made two contracts with the buyer for the sale of Finnish timber. The contracts were the Uniform 1933 Contract (F.O.B. form) adopted by the Timber Trade Federation and various other bodies. When the wood was delivered, the buyer rejected it as not in accordance with contract. As to the question whether the goods so differed from the contract description as to give the buyer the right to reject them, his lordship held that they did. The other questions left for the court are dealt with in the judgment.

Lewis, J., said he found that the goods did not comply with the contract specification. Although the contract provided that the buyer must not reject, but must be satisfied with an allowance, that provision had been dealt with in the courts and it was clear that if goods did not comply with the contract specification a buyer was entitled to reject in spite of the provision with regard to the fact that goods which did comply with the contract were delivered mixed with goods which did not, he held that, under s. 30 of the Sale of Goods Act, 1893, the buyer was entitled to reject the whole consignment notwithstanding any custom there might be in the trade to the contrary (*North Western Rubber Company* v. *Hüttenbach & Co.* [1908] 2 K.B. 907, at pp. 917 and 922). As to the effect to be given to a clause in the contracts providing: "Each item of this contract to be considered a separate interest," he had great difficulty in seeing what those words meant. The sellers contended that if every item but one was not of the contract description the buyer would still be bound to accept the one that was. On the whole, he had come to the conclusion that the words only applied where a dispute had arisen as to quantities. The provision came at the end of a paragraph saying what was to be done in a case of overshipment or a case of undershipment, and he did not think it was intended to apply where there was a dispute as to quality. In his opinion, the buyer had a right to reject, and the appeal failed.

Counsel: *Le Quesne*, K.C., and *H. Parker*, for the appellants; *A. T. Miller*, K.C., *F. A. Sellers*, K.C., and *R. E. Gething*, for the respondent.

Solicitors: *William A. Crump & Son; Blundell, Baker and Co.*, Agents for *Snowball, Kyffin-Taylor & Pruddah*, Liverpool.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Saxton *v.* **Nicholson & Co. Ltd.**

Lewis, J. 21st November, 1935.

Contract—Sale of Timber—Sample sent not According to Contract Dimensions—Complaint by Buyer—Quality Approved—Refusal by Sellers to Deliver Balance of Timber—Rights of Buyer.

Special case stated by an arbitrator.

By a contract dated the 30th October, 1933, the sellers sent to the buyer, Saxton, a sample shipment of forty logs out of a total of 1,000 logs ordered. The buyer having complained that the logs were not of the contract dimensions, the sellers refused to deliver the remainder of the 1,000 logs. In the arbitration, the buyer claimed damages for breach of contract by the sellers (*a*) in delivering a sample which was not according to contract, and (*b*) in failing to deliver the balance of the logs. The sellers contended that the meaning of the words "Subject to sample quantity," which appeared in the contract, was

that a sample quantity should be shipped, and that then a binding contract should be entered into for the sale of 1,000 logs if the buyer approved of the sample, and they said that, as the buyer had not approved of the sample, there had been no binding contract as to the 1,000 logs. The buyer contended that the contract was a sale of 1,000 logs with a right in the buyer to refuse the goods if he did not approve of the sample, and that, if he did approve, the sellers were bound to deliver the whole quantity. Counsel referred in argument to *Chillingworth* v. *Esche* [1924] 1 Ch. 97; *Hillas & Co.* v. *Arcos Ltd.*, 38 Com. Cas. 23; *Rossdale* v. *Denny* [1921] 1 Ch., at p. 63; *Mody* v. *Gregson*, L.R. 4 Ex., at p. 55. The arbitrator found as a fact that the logs were not of the contract dimensions. There was no express finding that the sample was approved for quality, but his lordship held that the facts justified the inference that it was. The questions for the court were whether the buyer was entitled to damages (*a*) for the faulty sample, and (*b*) for the non-delivery of the balance of the logs.

Lewis, J., said that the buyer accepted the forty logs, but claimed damages because they were not cut to the contract thicknesses. He then asked for delivery of the remainder of the 1,000 logs, and as the sellers failed to deliver he claimed further damages for non-delivery. It was not now contended that the sample was in accordance with the contract, and the buyer's claim for damages under that head must succeed. The second part of the claim depended on whether the document was a binding contract for the sale of 1,000 logs or a binding contract only for the sale of the sample shipment and a mere agreement to make an agreement with regard to the rest. He was satisfied that the document, with its mention of prices, sizes, and other matters, was far beyond a mere contract to make a contract. He held that the object of the sample was only to show quality and that if it was approved there was a firm contract for the sale of about 1,000 logs. It was approved for quality, therefore the buyer was entitled to damages for non-delivery of the remainder, and both questions must be answered in his favour.

Counsel: *F. A. Sellers*, K.C., and *Cyril Conner*, for the sellers; *H. Parker*, for the buyer.

Solicitors: *Lightbounds, Jones & Bryan*; *W. A. Crump and Son*.

[Reported by R. C. Calburn, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

In the Estate of Henry Thomas Parnall, deceased.

Langton, J. 5th December, 1935.

Probate—Intestacy—Presumption of Death—Uncertainty of Date of Death—Special Grant to Public Trustee—Court of Probate Act, 1857 (20 & 21 Vict. c. 77), s. 73—Supreme Court of Judicature (Consolidation) Act, 1925 (15 & 16 Geo. 5, c. 49), s. 162 (1)—Administration of Justice Act, 1928 (18 & 19 Geo. 5, c. 26), s. 9.

This was a motion for a grant of letters of administration to the estate of Henry Thomas Parnall, of the value of £546. A question had arisen as to who was entitled to the grant owing to uncertainty as to the date of death. Henry Thomas Parnall was last heard of on 4th May, 1905, and his sister, Mrs. Yates, on 11th February, 1935, was given leave by the court to swear that he had died a bachelor and intestate on or since 4th May, 1905. The father of the deceased died in 1909 and his surviving executor was his son, W. S. Parnall. W. S. Parnall was entitled to the grant now sought, either as executor of his father if the father survived the son, or as next of kin if the son survived the father. W. S. Parnall refused to take a grant, and therefore his sister, Mrs. Yates, now applied for a grant to the Public Trustee (who had expressed his willingness to act) under the special powers of the court conferred either by s. 73 of the Court of Probate Act, 1857, or s. 162 of the Judicature (Consolidation) Act, 1925, as amended by s. 9 of the Administration of Justice Act, 1928, whichever was applicable having regard to the actual date of Henry Thomas Parnall's death. Counsel, in moving the court, said that the refusal of the person entitled in priority justified the court in exercising its special powers. Under s. 73 of the Act of 1857 a special administrator had, in similar circumstances, been appointed where the date of the death was uncertain. He referred to *In the Goods of Harling* [1900] P. 59, following *In the Goods of Peck* (1860), 2 Sw. & Tr. 506.

Counsel for the Public Trustee submitted to the judgment of the court.

W. S. Parnall had received notice but did not appear.

Langton, J., made the order as prayed.

Counsel: *N. H. Moller*, for the applicant; *W. Hanbury Aggs*, for the Public Trustee.

Solicitors: *Braikenridge & Edwards*, for *Veale & Co.*, Bristol.

[Reported by J. F. Compton-Miller, Esq., Barrister-at-Law.]

Court of Criminal Appeal.

R. *v.* Pomeroy.

Lord Hewart, C.J., Goddard and Singleton, JJ.
9th November, 1935.

Criminal Law—Road Traffic—Dangerous Driving—Driving when Disqualified—Charges Tried Together.

Appeal against conviction.

The appellant, Pomeroy, while driving a motor-car along a road in Kent, collided with a group of hop-pickers, killing one of them. He immediately jumped out of the car and disappeared. At the time of the accident, the appellant was disqualified for holding a licence. He was subsequently charged at Maidstone Sessions with this offence and with driving a motor vehicle in a manner dangerous to the public, and was sentenced to concurrent terms of two years' and six months' imprisonment. He was also disqualified for life for holding a licence. He appealed.

Goddard, J., giving the judgment of the court, said that for some reason which the court could not understand, but which was to be deplored, if not censured, the magistrates had thought fit, instead of committing the appellant to assizes on a charge of manslaughter, to commit him to quarter sessions on charges of dangerous driving and driving when disqualified. It was difficult to conceive how any magistrates could have thought it proper to deal with the present case on a minor charge. If the appellant had been sent to assizes, he might well have been sentenced to a long term of penal servitude. The only complaint made with regard to the trial was that the two charges of dangerous driving and driving when disqualified were tried together. While it was permissible in law to adopt that course, it was, in the opinion of the court, undesirable that it should be adopted in a case like this, because, although no details had been given as to why the appellant was disqualified for holding a licence, the mere mention of the fact that he was disqualified might, and probably would, indicate to the jury that he had been convicted of some motoring offence of a more or less serious character. In the present case, however, there had been no miscarriage of justice, because the appellant's defence was not that he was not driving dangerously, but that he was not the driver of the car in question. Further, though the appellant had been defended by counsel of experience, no application had been made to the court that the two counts should be tried separately, and it was too late to take such a point on appeal. The appeal against conviction must therefore be dismissed. On the charge of driving when under disqualification the court had passed a sentence of six months' imprisonment with hard labour, and they appeared to have thought they could not make that sentence consecutive to the sentence of two years' imprisonment with hard labour for

dangerous driving, but, had they done so, it would be difficult to suppose that the Court of Criminal Appeal would have disturbed it.

COUNSEL: *Martin O'Connor*, for the appellant: *G. G. Raphael*, for the Crown.

SOLICITORS: *Edmond O'Connor & Co.; Director of Public Prosecutions.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

TABLE OF CASES previously reported in current volume.

Societies.

Inns of Court.

CALLS TO THE BAR.

Monday, 27th January, was Call Night at the Inns of Court. The following were called:

LINCOLN'S INN.

J. B. Carson, New College, Oxford, B.A. (Hons. Histy), Dwijes Chandra Gupta, London University and Calcutta University, M.A., B.L., Akinola Adio Adesigbin, Banamali Das, Downing College, Cambridge, B.A., and Calcutta University, B.A., L. H. Richards, Peterhouse, Cambridge, C. A. G. Simkins, New College, Oxford, B.A. (Hons. Histy.), Buchanan Prize, Lincoln's Inn, Trinity, 1935, J. W. Parsons, London University, B.A., J. H. M. Lee, London University, LL.B., Arunendra Mohan Basu, Calcutta University, B.A., and London University, T. J. D'Souza, Calcutta University, B.A., and Delhi University, M.A., H. F. MacMaster, Sidney Sussex College, Cambridge, B.A., LL.B., a Cholmeley Student, Lincoln's Inn, Buchanan Prize, Lincoln's Inn, Hilary, 1936, E. Gordon, Paris University (Faculty of Law), Irshadulla Khan, Allahabad University, B.A.

INNER TEMPLE.

P. Stanley-Price (Holder of a Certificate of Honour awarded 1935, of an Entrance Scholarship, awarded 1933, of a Profumo Prize, awarded 1935, and of a Pupil Studentship, awarded 1935), Exeter College, Oxford, B.A., D. C. Norris, University of London, M.D., B.S., A. A. A. Rajasingham, King's College, London, B.Sc., P. C. Yu, Pembroke College, Cambridge, B.A., T. D. Hughes, King's College, London, A. D. C. Millar, New College, Oxford, M.A., M. H. Weaver, Trinity College, Cambridge, B.A., F. G. Spicer, N. L. Lieu, Jesus College, Cambridge, B.A., I. A. Cardell-Oliver, Jesus College, Cambridge, B.A. LL.B., J. N. W. Leech, St. Edmund Hall, Oxford, B.A., Miss E. H. M. Thorneycroft, Lady Margaret Hall, Oxford, B.A., K. S. Lewis (Poland Prizeman, 1933), Miss M. L. Williams, Lady Margaret Hall, Oxford, B.A., B.C.L., R. E. K. Thesiger, Magdalen College, Oxford, D. J. Brabin, Trinity Hall, Cambridge, B.A., H. S. Chittick, Gonville and Caius College, Cambridge, M.A., P. E. Underwood, Clare College, Cambridge, B.A., C. B. Hobhouse, Balliol College, Oxford, P. G. Roberts, Trinity College, Cambridge, B.A., S. M. Kimpton, Brasenose College, Oxford, B.A., M. Jaffee, Trinity College, Cambridge, M.A., and University of London, B.Sc., LL.B.

MIDDLE TEMPLE.

A. E. McDonald, holder of a certificate of Honour awarded Trinity Examination, 1933, Balliol College, Oxford, Harmsworth Law Scholar, Blackstone Prizeman, R. H. Hunt, holder of a Studentship and Certificate of Honour awarded Michaelmas Examination, 1935, B.A., of Queen's College, Oxford, Harmsworth Law Scholar, Prince Jehan Seesodia, Harry Myo Kin, M.A., St. John's College, Cambridge, Sheikh Mahmud Ahmad, Lincoln College, Oxford, Prabhat Kumar Pal, B.A., Calcutta University, J. R. Colclough, B.Sc.(Econ.), London University, J. R. B. Jones, LL.B., London University, Prem Sagar Sood, B.Com., Edinburgh University, R. H. Dias-Abeyesinghe, Balliol College, Oxford, M. F. Peacock, B.A., Brasenose College, Oxford, Vellukunnel Varkki Joseph, B.A. (Hons.), Madras University, M. H. Hill, F. C. Benn, B.A., Clare College, Cambridge, F. N. Bucher, B.A.(Hons.), Oriel College, Oxford, Harmsworth Law Scholar, R. E. B. Williams, J. B. Latey, B.A., Christ Church, Oxford, A. B. Boyle, B.A., Brasenose College, Oxford, M. J. A. Lalouette, Exeter College, Oxford, Gordhandas Ratilal Shah, B.A., Bombay University, F. Collar, M.R.C.S. Engl., L.R.C.P. Lond., Sthanuvilas Palpupillai Paramaswaran Pillai, B.A., B.L., Madras University, J. R. D. Crichton, B.A., Balliol College, Oxford, B. J. Misselbrook, LL.B., London University, H. E. Park, B.A., Sidney Sussex College, Cambridge, F. T. Willey, B.A., LL.B., and Foundation Scholar of St. John's College, Cambridge, Harmsworth Law Scholar, Blackstone Prizeman, MacMahan Law Student, A. D. A. Balfour, B.A., Magdalene College, Cambridge, Mohammed Serajul Haque, Appasaheb Ganapatrao Pawar, Ph.D., London University, M.A., LL.B., Bombay University, L. J. Stock, C. A. Moffatt, B.Com., B.Sc.(Hons.), London University, A. M. Knight, B.Sc., Victoria University of Manchester, A. H. Carmichael, A. Wittowski, Doctor Juris, Freiburg University, Germany, Kaldip Chand Bedi, M.A., Punjab University, Iqbal Chand Chopra, Barrister-at-Law of Northern Ireland and the Irish Free State.

GRAY'S INN.

E. N. Landale, Holder of a Certificate of Honour, Council of Legal Education, Trinity, 1935, Lord Justice Holker Senior Scholar, Gray's Inn, 1935, B.A., Magdalen College, Oxford, Ghazanfur Ali Khan, H. C. Gill, B.A., Christ Church, Oxford, F. Southworth, B.A., B.C.L., Exeter College, Oxford, E. B. Simmons, J. Booth, LL.B., Victoria University of Manchester, G. R. Morley, M.A., Jesus College, Oxford, C. C. Scarth, B.A., Wadham College, Oxford, H. H. Kingsley, Undergraduate, Victoria University of Manchester, D. Matussevich, LL.B., University of London, H. A. White, B.A., University of London, A. H. Elliott, LL.B., University of London, D. J. N. Anderson, B.A., University of Hong-kong, Undergraduate, University of London, R. Stock, B.A., Balliol College, Oxford, Winter Williams Law Scholar, Oxford University, 1932, R. Gottschalk, LL.M., University of London and Dcotor of Laws, Leipzig University.

The Hardwicke Society.

A meeting of the Society was held on Friday, 17th January, at 8.15 p.m., in the Middle Temple Common Room, the President Mr. T. H. Mayers, in the chair. Mr. J. Reginald Jones (G.I.) moved: "That this House has no confidence in the League of Nations." Mr. L. Ungoed Thomas (ex-President) opposed. There also spoke: Mr. Whitfield, Mr. P. J. Chimmulgund, Miss E. Bright Ashford, Mr. Willard Sexton, Mr. Campbell Prosser, Mr. James A. Petrie, Mr. T. K. Wigan, Mr. A. Newman Hall (ex-President), Mr. J. Boyd Carpenter, Mr. Simon Wiggins, Mr. Sadler, Mr. Ifor Lloyd (ex-President). The hon. mover having waived his right of reply the House divided, and the motion was lost by two votes.

Legal Notes and News.

Honours and Appointments.

LORD HEWART, the Lord Chief Justice, has been elected a vice-president of the Horatian Society, of which Lord Hereford is president.

Mr. TREVOR HUNTER, K.C., Mr. BRUCE THOMAS, K.C., Mr. J. F. EALES, K.C., M.P., and LORD READING, K.C., have been elected Masters of the Bench of the Middle Temple.

Mr. W. I. LEESON DAY, solicitor, has been appointed Clerk to Holsworthy Rural District Council, in succession to Mr. C. Kinsman, who is retiring. Mr. Day was admitted a solicitor in 1906.

Professional Announcements.

(2s. per line.)

SOLICITORS & GENERAL MORTGAGE & ESTATE AGENTS ASSOCIATION.—A link between Borrowers and Lenders, Vendors and Purchasers.—Apply, The Secretary, Reg. Office: 12, Craven Park, London, N.W.10.

Notes.

The Law and Parliamentary Committee of the West Riding County Council have recommended that the application by the Sheffield Corporation for the setting up of a separate Assize in Sheffield should be opposed by the County Council.

The London and Home Counties branch of the National Association of Probation Officers is holding a meeting at Victory House, Leicester-square, W., on Tuesday, 11th February, at 5.30 p.m., when Mr. Claud Mullins, Metropolitan Magistrate, will speak on "Police Court Matrimonial Work."

An address on the Ribbon Development Act, 1935, will be delivered at 7.30 p.m., on Tuesday, 4th February, by Mr. T. J. Sophian, Barrister-at-Law, at the headquarters of the Incorporated Society of Auctioneers and Landed Property Agents, 34, Queen's-gate, South Kensington, S.W.7. The attendance of members and friends will be welcomed.

A sessional evening meeting of the members of The Auctioneers' and Estate Agents' Institute of the United Kingdom will be held at 29, Lincoln's Inn-fields, W.C.2, on Thursday, 6th February, at 7 p.m., when Mr. John A. Rosevear (Fellow; F.S.I.; Assoc. Member, T.P.I.; Diploma, Town Planning, London University) will deliver a paper entitled: "The Restriction of Ribbon Development Act, 1935."

Mr. L. H. H. Walden, clerk at Stratford Police Court' last Saturday gave a *résumé* of the work done at the court during the year 1935. He stated that 657 courts had been held. There had been 40,237 charges and summonses and the motor fines had amounted to £5,559. The increase in the charges and summonses compared with the previous year was over 7,000. No fewer than 1,172 juvenile courts had been held. Under the Married Women and Affiliation Acts £26,500 had been collected.

The following message, signed by seventy members of the Bar of Ireland, practising in the Irish Free State, was sent to the King's Private Secretary: "We, the undersigned members of the Bar of Ireland, practising in the Irish Free State, respectfully request you to convey with our humble duty to His Majesty the King our respectful sympathy with His Majesty, Her Majesty the Queen, and the Royal Family in the loss sustained by the death of our late Most Gracious Sovereign King George V."

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT I.	GROUP I. MR. JUSTICE EVE. Witness Part II.	MR. JUSITCE BENNETT. Non-Witness
	Mr.	Mr.	Mr.	Mr.
Feb. 3	Blaker	Andrews	Andrews	Ritchie
,, 4	More	Jones	*More	Andrews
,, 5	Hicks Beach	Ritchie	Ritchie	More
,, 6	Andrews	Blaker	*Andrews	Ritchie
,, 7	Jones	More	More	Andrews
,, 8	Ritchie	Hicks Beach	Ritchie	More

	GROUP I. MR. JUSTICE CROSSMAN. Witness. Part I.	MR. JUSTICE CLAUSON. Witness. Part I.	GROUP II. MR. JUSTICE LUXMOORE. Non-Witness.	MR. JUSTICE FARWELL. Witness. Part II.
	Mr.	Mr.	Mr.	Mr.
Feb. 3	*More	*Jones	Hicks Beach	*Blaker
,, 4	*Ritchie	*Hicks Beach	Blaker	Jones
,, 5	*Andrews	*Blaker	Jones	*Hicks Beach
,, 6	More	*Jones	Hicks Beach	Blaker
,, 7	*Ritchie	Hicks Beach	Blaker	*Jones
,, 8	Andrews	Blaker	Jones	Hicks Beach

* The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 6th February, 1936.

	Div. Months.	Middle Price 29 Jan. 1936.	Flat Interest Yield. £ s. d.	‡Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	114¾	3 9 8	3 0 9
Consols 2½%	JAJO	85¾	2 18 4	—
War Loan 3½% 1952 or after	JD	106½	3 5 9	3 0 2
Funding 4% Loan 1960-90	MN	118	3 7 10	2 18 10
Funding 3% Loan 1959-69	AO	104	2 17 8	2 15 3
Victory 4% Loan Av. life 23 years	MS	116½	3 8 8	2 19 11
Conversion 5% Loan 1944-64	MN	120½	4 3 0	2 0 0
Conversion 4½% Loan 1940-44	JJ	111½	4 0 9	2 4 8
Conversion 3½% Loan 1961 or after	AO	108	3 4 10	3 0 9
Conversion 3% Loan 1948-53	MS	104¼xd	2 17 5	2 11 2
Conversion 2½% Loan 1944-49	AO	102	2 9 0	2 4 3
Local Loans 3% Stock 1912 or after	JAJO	96⅔	3 2 0	—
Bank Stock	AO	373½	3 4 3	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	87½	3 2 10	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	96	3 2 6	—
India 4½% 1950-55	MN	114½	3 18 7	3 3 11
India 3½% 1931 or after	JAJO	97½	3 11 10	—
India 3% 1948 or after	JAJO	85	3 10 7	—
Sudan 4½% 1939-73 Av. life 27 years	FA	118½	3 15 11	3 8 9
Sudan 4% 1974 Red. in part after 1950	MN	115½	3 9 3	2 14 7
Tanganyika 4% Guaranteed 1951-71	FA	114	3 10 2	2 16 9
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	110	4 1 10	2 13 5
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	109	3 13 5	3 7 0
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	103	3 12 10	3 9 3
Canada 4% 1953-58	MS	111	3 12 1	3 3 8
*Natal 3% 1929-49	JJ	100	3 0 0	3 0 0
*New South Wales 3½% 1930-50	JJ	100	3 10 0	3 10 0
*New Zealand 3% 1945	AO	101	2 19 5	2 17 6
Nigeria 4% 1963	AO	114	3 10 2	3 4 8
*Queensland 3½% 1950-70	JJ	101	3 9 4	3 8 2
South Africa 3½% 1953-73	JD	108	3 4 10	2 17 11
*Victoria 3½% 1929-49	AO	102	3 8 8	—
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	96	3 2 6	—
*Croydon 3% 1940-60	AO	100	3 0 0	3 0 0
Essex County 3½% 1952-72	JD	106	3 6 0	3 0 11
Leeds 3% 1927 or after	JJ	95	3 3 2	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	106	3 6 0	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	82	3 1 0	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	96	3 2 6	—
Manchester 3% 1941 or after	FA	96	3 2 6	—
*Metropolitan Consd. 2½% 1920-49	MJSD	100½	2 9 9	—
Metropolitan Water Board 3% "A" 1963-2003	AO	99	3 0 7	3 0 8
Do. do. 3% "B" 1934-2003	MS	99	3 0 7	3 0 8
Do. do. 3% "E" 1953-73	JJ	101	2 19 5	2 18 5
†Middlesex County Council 4% 1952-72	MN	114	3 10 2	2 18 10
† Do. do. 4½% 1950-70	MN	117	3 16 11	3 1 4
Nottingham 3% Irredeemable	MN	96	3 2 6	—
Sheffield Corp. 3½% 1968	JJ	106	3 6 0	3 3 11
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	115½	3 9 3	—
Gt. Western Rly. 4½% Debenture	JJ	126½	3 11 2	—
Gt. Western Rly. 5% Debenture	JJ	137½	3 12 9	—
Gt. Western Rly. 5% Rent Charge	FA	134½	3 14 4	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	134½	3 14 4	—
Gt. Western Rly. 5% Preference	MA	121½	4 2 4	—
Southern Rly. 4% Debenture	JJ	115	3 9 7	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	115	3 9 7	3 2 11
Southern Rly. 5% Guaranteed	MA	134½	3 14 4	—
Southern Rly. 5% Preference	MA	122½	4 1 8	—

*Not available to Trustees over par. †Not available to Trustees over 115.
‡In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

936

tain

Stock
6.

Approximate Yield with demption
£ s. d.
3 0 9
—
3 0 2
2 18 10
2 15 3
2 19 11
2 0 0
2 4 8
3 0 9
2 11 2
2 4 3
—
—
—
—
—
3 3 11
—
—
3 8 9
2 14 7
2 16 9
2 13 5
3 7 0
3 9 3
3 3 8
3 0 0
3 10 0
2 17 6
3 4 8
3 8 2
2 17 11
—
—
—
3 0 0
3 0 11
—
—
—
—
—
—
3 0 8
3 0 8
2 18 5
2 18 10
3 1 4
—
3 3 11
—
—
—
—
—
—
—
3 2 11
—
—

over 115.
calculated